

IAPJKET1

Sinclair - direct

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 00243 (SHS)

5 ANDREW OWIMRIN, a/k/a "Andrew Owens,"  
6 a/k/a "Jonathan Stewart," and  
7 SHAHRAM KETABCHI, a/k/a "Steve Ketabchi,"

8 Defendants.

-----x

9 October 25, 2018  
9:15 a.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 District Judge  
13 and a jury

14 APPEARANCES

15 GEOFFREY S. BERMAN

United States Attorney for the  
Southern District of New York

16 KIERSTEN A. FLETCHER

ROBERT B. SOBELMAN

17 BENET J. KEARNEY

Assistant United States Attorneys

18 SAM A. SCHMIDT

19 ABRAHAM J. ABEGAZ-HASSEN

Attorneys for Defendant Owimrin

20 KENNETH A. PAUL

21 JACOB MITCHELL

Attorneys for Defendant Ketabchi

22 Also Present:

23 CHRISTOPHER BASTOS, Detective NYPD and HSI

CHRISTINE LEE, Paralegal USAO

24 SAMUEL TUREFF, Paralegal

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1 (Trial resumes)

2 (In open court; jury not present)

3 THE COURT: All right. Bring the jury in. The jury  
4 is now here. I think Ms. Fletcher, you said you had 10 minutes  
5 on this line. You did not indicate how much longer you thought  
6 you had?

7 MS. FLETCHER: Your Honor, given the additional  
8 questions overnight, I expect to be another hour to 90 minutes.

9 THE COURT: All right. I am going to ask everybody to  
10 pick it up when this witness is off.

11 MR. PAUL: Sorry, your Honor?

12 THE COURT: I said I am going to ask everybody to pick  
13 up the pace after this witness is off.

14 (Jury present)

15 THE COURT: Good morning, ladies and gentlemen.  
16 Please be seated in the courtroom. You may continue with your  
17 direct examination of Mr. Sinclair.

18 WILLIAM SINCLAIR,

19 called as a witness by the Government,

20 having been previously duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. FLETCHER:

23 Q. Good morning, Mr. Sinclair.

24 A. Good morning.

25 THE COURT: Mr. Sinclair, you understand you remain

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1 under oath, correct?

2 THE WITNESS: Yes, sir, your Honor.

3 BY MS. FLETCHER:

4 Q. Mr. Sinclair, let's start by talking a bit more about the  
5 rules and the fines that we discussed yesterday. Do you  
6 remember that?

7 A. Yes, ma'am.

8 Q. You looked at a couple of documents recommending fines for  
9 Mr. Owimrin. Do you remember that?

10 A. Yes, ma'am.

11 Q. Do you recall whether Mr. Owimrin was, in fact, fined?

12 A. I cannot say with absolute certainty that he was or was  
13 not. My guess would be that --

14 MR. SCHMIDT: Objection, your Honor.

15 THE COURT: The jury does not want a guess. Do not  
16 guess. If you have reason to believe one way or the other  
17 based on experience or whatever it may be, say it, but no  
18 guesses.

19 THE WITNESS: Yes, sir.

20 THE COURT: Only you know whether it is truly a guess  
21 or not. The question was, do you recall whether Mr. Owimrin  
22 was, in fact -- do you know whether Mr. Owimrin was actually  
23 fined?

24 THE WITNESS: No, sir, your Honor.

25 THE COURT: All right.

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1 BY MS. FLETCHER:

2 Q. Putting aside whether Mr. Owimrin was fined, did you  
3 communicate with Mr. Owimrin regarding those flat calls?

4 A. Yes.

5 Q. Why did you do that?

6 A. It was necessary to our overall goal.

7 Q. What was your overall goal?

8 A. To continue to operate, to be profitable.

9 THE COURT: To make money, right?

10 THE WITNESS: Yes, sir.

11 BY MS. FLETCHER:

12 Q. Was it necessary to your goal of making money you speak  
13 with Mr. Owimrin about those flat calls?

14 A. We needed to do everything that we could to stay off of any  
15 radar with federal agencies, FTC, et cetera.

16 Q. What is the FTC?

17 A. Federal Trade Commission.

18 Q. How, if at all, does these FTC calls, based on your own  
19 understanding, relate to telling sales force?

20 A. They're a regulatory type of, I guess, entity who imposes  
21 fines. Basically like consumer protection.

22 Q. What are one of the rules we talked about was earnings  
23 claims. Do you remember that?

24 A. Yes.

25 Q. What was the rule in the State of Florida about earnings

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1 claims?

2 A. You could not do it. It was not permitted.

3 Q. How, if at all, was that rule modified in the case of a  
4 Youngevity sale?

5 A. Youngevity was different because people did get checks.

6 Q. From whom did people get checks?

7 A. From Youngevity directly.

8 Q. How are you aware that people got checks from Youngevity?

9 A. Through conversations with clients directly and also  
10 conversations that I've had with Anthony Medeiros, who was the  
11 individual who came to us with this idea to sell Youngevity.

12 Q. Did Mr. Medeiros work for you?

13 A. Yes.

14 Q. What was his role?

15 A. In addition to orchestrating the Youngevity program, he was  
16 a sales representative for a very short time.

17 Q. Can you remind the jury exactly what Youngevity is.

18 A. Can I have open communication?

19 Q. You can answer the question.

20 A. Okay. So Youngevity is a multilevel marketing type of a  
21 pyramid type of a setup where the person at the top makes money  
22 off of everyone who comes in beneath them.

23 Also ways, two ways people are supposed to be able to  
24 make money is that they sell healthy wellness products, that is  
25 the company itself. So you can either sell their products as

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1 like an affiliate marketer of their products, or you could  
2 bring other people on underneath you, and you get a commission  
3 based on that as well, so there is two ways that you can earn  
4 money.

5 Q. When you started selling Youngevity, what was your  
6 understanding as to how Olive Branch could make money with  
7 Youngevity?

8 A. So Olive Branch had a top spot, and all the customers we  
9 brought in underneath Olive Branch were supposed to pay us  
10 commissions.

11 Q. Did it work out?

12 A. We made some money, nowhere near what we were supposed to,  
13 so it didn't work out, no.

14 Q. You mentioned customers were getting checks.

15 Were you made aware of the amount of the checks that  
16 customers were getting?

17 A. Specifically, no.

18 Q. Did there come a time when you were made aware of customer  
19 complaints related to Youngevity?

20 A. Yes.

21 Q. What, if anything, did you do in response to those customer  
22 complaints?

23 A. Ultimately, we stopped selling it.

24 Q. Did you do anything else to address the complaints?

25 A. I had to personally write some customers checks.

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1 Q. When did that begin?

2 A. To the best of my memory, probably late 2015.

3 Q. Approximately how many customers did you send a check?

4 A. Again I don't know specifics. I'd say at least a dozen,  
5 maybe a few dozen.

6 Q. Approximately how much were the checks that you sent?

7 A. A few hundred dollars apiece.

8 Q. What was the purpose of you personally sending these checks  
9 to these customers?

10 A. Complaints turned into problems, and I did not want any  
11 problems.

12 Q. When we broke yesterday, we were talking about fulfillment.  
13 Do you remember that?

14 A. Yes.

15 Q. Who did fulfillment for your floor during 2014, 2015?

16 A. Predominantly Ray Quiles.

17 Q. Let's talk about how Ray Quiles provided you fulfillment  
18 for each of the products you sold.

19 Starting with Youngevity, what was the fulfillment for  
20 Youngevity?

21 A. The fulfillment for Youngevity was a website. They also  
22 got the products directly from Youngevity, so it was split.  
23 That was a little bit different. We go through a process with,  
24 where each one of our customers where they got the website and  
25 there could have been additional products that were sold as

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1 add-ons as well.

2 Q. Did Ray Quiles, did he provide that fulfillment?

3 A. Yes.

4 Q. How about Corporate Credit, how did the Corporate Credit  
5 product fulfill by Ray?

6 A. It really couldn't have been.

7 Q. Why not?

8 A. Because for Corporate Credit, most agencies or banks are  
9 going to require a minimum of two years of financials, which  
10 these individuals did not have.

11 Q. How about bookkeeping, how was bookkeeping fulfilled by Ray  
12 Quiles?

13 A. Very similar to Corporate Credit. You can't keep books for  
14 a business that doesn't exist.

15 Q. How about the LLC or corporate setup product, how was that  
16 fulfilled?

17 A. So that, you have to go through the IRS website and  
18 something called an EIN is obtained, an employer identification  
19 number. If it is an LLC, you get articles of formation in the  
20 mail or email. If it is a corporation, you get articles of  
21 incorporation, which is paperwork just showing your federal tax  
22 email number.

23 Q. Are you familiar with how much it costs to incorporate an  
24 LLC or a corporation in the State of New Jersey?

25 A. \$125, I believe.



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1 Q. How is the business plan of product fulfilled?

2 A. It's like a booklet, cookie-cutter booklet.

3 Q. How about the YouTube video?

4 A. A YouTube video is like a commercial for said business.

5 Q. Were the commercials created?

6 A. Yes.

7 Q. How about search engine optimization, how is that  
8 fulfilled?

9 A. My understanding, and I am not a tech person at all, there  
10 are --

11 MR. SCHMIDT: Objection, your Honor.

12 THE COURT: No. I will allow it.

13 A. -- there are ways to encrypt certain words, that if someone  
14 types in a specific keyword into Google, et cetera, English  
15 search engine, it will help prompt that website up to the top  
16 higher.

17 Q. Was that work done, to your knowledge?

18 A. To my knowledge, it was.

19 Q. Did there come a time when you began to tell your  
20 salespeople you prefer certain of these products over others?

21 A. Yes.

22 Q. In general, what type of products did you prefer that your  
23 salespeople sold?

24 A. We referred to them as deliverables, which is just anything  
25 tangible.

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1 Q. What are some of the products that are more tangible than  
2 others?

3 A. A corporation, social media marketing, a business plan, a  
4 logo, items like that where you can touch them or see them.

5 Q. Why did you prefer that your salespeople sold tangible  
6 products?

7 A. Because on the back end of it, if someone tried to  
8 charge-back, to dispute their charges with their credit card,  
9 it was much easier to prove that we did work for said customer  
10 by being able to provide proof.

11 Q. What did your proof of fulfillment, what, if any, effect  
12 did your actual proof of fulfillment have addressing that  
13 charge-back?

14 A. What effect did it have?

15 Q. Yes.

16 A. To the merchant company who ultimately decides if you win  
17 or lose a charge-back, it shows that we performed said work for  
18 them, for the customers.

19 Q. What effect would that have, in your view, at the time?

20  
21 A. They --

22 MR. SCHMIDT: Objection as to would have.

23 THE COURT: Sustained as to form.

24 BY MS. FLETCHER:

25 Q. What was your understanding as to how that would affect

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1 your likelihood of winning the charge-back?

2 A. It would increase it.

3 Q. This preference for tangible products, did you communicate  
4 that preference to the salespeople who worked for you?

5 A. Yes.

6 Q. What, if any, reasons did you provide to the salespeople as  
7 to why you preferred they sold tangible products?

8 A. I told them exactly that.

9 Q. What did you tell them?

10 A. It would increase our charges of winning charge-backs.

11 Q. Were there regular staff meetings on your sales floor?

12 A. There were, yes. At times more regular than others, but,  
13 yes, there were.

14 Q. How regular were those meetings during the 2014, 2015  
15 time-frame?

16 A. For a time within that window, we had them on Fridays, but  
17 not for the entire time 2014 and 2015. Sometimes we just had  
18 them as needed.

19 Q. During those meetings, whether they were regular or as  
20 needed, who attended?

21 A. Everyone.

22 Q. When you say "everyone," who do you mean?

23 A. The entire company, the whole staff. In addition, at times  
24 Ray Quiles would come and discuss various items with us.

25 Q. What items were discussed at those sales meetings?

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1 A. What problems --

2 Q. Sorry, sales floor meetings, I should say?

3 A. What types of problems they were encountering on the back  
4 end of fulfillment after the sales meeting.

5 Q. When you say "they," who are you referring to.

6 A. Fulfillment.

7 Q. Is that Ray Quiles?

8 A. Yes.

9 Q. What problems did Quiles make known to your floor during  
10 those meetings?

11 A. That sales reps were, indeed, making promises to customers.

12 Q. What types of promises?

13 A. Earnings claims predominantly.

14 Q. Approximately how many times did Mr. Quiles alert the sales  
15 floor that salespeople were making earnings promises during  
16 those meetings?

17 A. I would say dozens.

18 Q. To your knowledge, did the earnings claims stop?

19 A. No.

20 MS. FLETCHER: Ms. Lee, can we just pull up what is  
21 marked for identification as Government Exhibit 406.

22 Q. Do you recognize Government Exhibit 406?

23 A. I don't see anything on my screen yet.

24 (pause).

25 THE COURT: Can you make that larger. (Pause)

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1 A. Yes.

2 BY MS. FLETCHER:

3 Q. What is Government Exhibit 406?

4 A. It is an email from Ray Quiles and his office to myself and  
5 Michael Finocchiaro.

6 Q. Generally what is the subject matter of this email?

7 A. A customer named Elizabeth Marcus.

8 MS. FLETCHER: The government offers Government  
9 Exhibit 406.

10 MR. SCHMIDT: Let's see if I have an objection, your  
11 Honor, if I may?

12 THE COURT: Take a look at the copies the prosecutor  
13 is giving you.

14 (Pause)

15 THE COURT: Mr. Paul, any objections?

16 MR. PAUL: Judge, may I have just one second with the  
17 government, please?

18 THE COURT: Yes.

19 (Off-the-record discussion)

20 MR. PAUL: I have no objection.

21 MR. SCHMIDT: I have no objection.

22 THE COURT: Did you say you have or have not?

23 MR. SCHMIDT: I do have an objection.

24 (pause)

25 MR. PAUL: There is confusion because one document was

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1 replaced with the exhibit that is being presented today. That  
2 is what we're trying to figure out. I have no objection.

3 (Pause)

4 MR. SCHMIDT: Your Honor, we do have an objection.  
5 This is hearsay on hearsay.

6 THE COURT: I understand. Response?

7 MS. FLETCHER: Your Honor, this is not being offered  
8 for the truth of the information in the underlying complaint.  
9 It is being offered as an example of the type of issues that  
10 were raised.

11 THE COURT: Sidebar.

12 (Continued on next page)

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1 (At sidebar)

2 THE COURT: What is your objection?

3 MR. SCHMIDT: This is hearsay. The information is  
4 obviously hearsay.

5 THE COURT: What is the -- wait. Marcus is the  
6 customer, not the co-conspirator.

7 MR. SCHMIDT: That is correct.

8 THE COURT: To certain extent 801 (d)(2)(E), from the  
9 standpoint it is coming from Ray, correct? So that top half is  
10 a co-conspirator statement, correct? It is in furtherance and  
11 during the course --

12 MR. SCHMIDT: It is from --

13 THE COURT: Ray is Ray Quiles. So your concern is  
14 with the bottom half?

15 MR. SCHMIDT: That is correct.

16 THE COURT: Because that's, you say, a hearsay  
17 statement?

18 MR. SCHMIDT: That is correct. Any kind of  
19 instruction that it is not being --

20 THE COURT: I understand.

21 MS. FLETCHER: An instruction would cure any issue  
22 with respect to that.

23 THE COURT: Why do you need that bottom half?

24 MS. FLETCHER: In order for this particular email to  
25 make sense, he is referring to what the customer is saying.

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1 THE COURT: Yes.

2 MS. FLETCHER: He is using an example that this person  
3 is going to introduce a number of other charge-backs.

4 THE COURT: Just a second. She has got 3, 4 total  
5 other charges. Go ahead.

6 MS. FLETCHER: So under the rule of completeness, in  
7 order for this to make sense, the jury needs to see what the  
8 complaint is he is forwarding.

9 THE COURT: Just let me read what you're saying.

10 (Pause)

11 MS. FLETCHER: There is more on the back, Judge.

12 THE COURT: Oh. All right, Mr. Schmidt?

13 In other words, an instruction it is not for the truth  
14 of the matter, but simply for the fact that it was said.

15 MR. SCHMIDT: If the issue in this particular case,  
16 Judge, explains to the jury that they're to ignore this for the  
17 truth of it, whether it directly impacts on what the government  
18 is trying to prove and how we're trying to defend, but we have  
19 no opportunity to examine this particular person --

20 THE COURT: I understand. That is why it is hearsay.

21 MR. SCHMIDT: It makes the charge of the jury to  
22 ignore this impossible. This is the case. Asking them to  
23 ignore this is ridiculous. They can't possibly ignore this. A  
24 human being can't possibly ignore that.

25 THE COURT: I take it your questions are not going to



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1 focus on the bottom?

2 MS. FLETCHER: No.

3 THE COURT: As a matter of fact, your questions are  
4 going to be about the top?

5 MS. FLETCHER: Yes.

6 THE COURT: I will allow it and I will give the jury  
7 the instruction. Let's proceed. Mr. Schmidt, what you should  
8 do, sir, is when the government paralegal is asked to tee-up a  
9 document, you should have your paralegal go through your  
10 binders and get the document because what is happening is it is  
11 only after the government attorney asks that it be admitted  
12 that you then turn to your binders. Have the paralegal do that  
13 and have him do it as soon as the government paralegal is asked  
14 to put it up on the screen.

15 MR. SCHMIDT: The problem is we were given three huge  
16 binders plus every day additional ones to put in.

17 THE COURT: That is what paralegals are for. That is  
18 their job.

19 MR. SCHMIDT: They're not in any order of who is being  
20 called as a witness.

21 THE COURT: I understand, but you have not only an  
22 idea, but you know the exact document once the government  
23 attorney says Ms. Lee, put up document blah, blah.

24 (Multiple voices)

25 MR. SCHMIDT: That is what we will do. As soon as we

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1 hear the number, we have to find --

2 THE COURT: I was under the impression you're only  
3 doing that when she was moving its admission. All right.

4 MR. SCHMIDT: No.

5 MR. PAUL: Additionally, I understand, for example,  
6 Ms. Kiersten gave a binder to this witness tееing up all the  
7 things she was going to be asking, including exhibits, I  
8 assume. It would be helpful if we were provided a copy of that  
9 so I wouldn't have to --

10 THE COURT: I agree with that. Whatever you're giving  
11 the witness, you should give copies to the defense. Proceed.

12 (Continued on next page)

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1 (In open court)

2 THE COURT: Or, alternatively, government, rather than  
3 the entire book, and I will talk obliquely, you can give each  
4 document at the time you mention it to the defendants rather  
5 than the entire book in advance. Do you understand what I am  
6 saying?

7 MS. FLETCHER: I, do your Honor.

8 THE COURT: Proceed.

9 MS. FLETCHER: The government offers Government  
10 Exhibit 406.

11 THE COURT: Admitted, consistent with the sidebar.

12 (Government's Exhibit 406 received in evidence)

13 THE COURT: Ladies and gentlemen, the bottom half of  
14 this document is not given to you which is, indeed, on the  
15 screen. It is not given to you for the truth of what is  
16 asserted. It is given to you simply for the fact that it was  
17 said, but not for its truth. Having said that, there are  
18 probably not going to be any questions about that bottom half.

19 Proceed.

20 BY MS. FLETCHER:

21 Q. Mr. Sinclair, do you see the date on this email chain?

22 A. The date?

23 Q. Yes?

24 A. Yes, ma'am.

25 Q. What is the date?

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1 A. November 27th, 2014.

2 Q. Take a look just briefly at the bottom half of this email  
3 chain. Who is the sender on the first email chronologically?

4 A. Ray Quiles.

5 Q. I will ask you to take a look at the very bottom of that  
6 page. Scroll down, please.

7 A. I am sorry. (Pause)

8 MS. FLETCHER: Ms. Lee, can you look at the bottom  
9 half.

10 A. Betty Marcus.

11 MS. FLETCHER: Without going through what it says  
12 here, can we pull up the top half of Page 2.

13 Q. Mr. Sinclair, I am not going to ask you to read the  
14 document, but what, in substance, is this email?

15 A. This is Ray Quiles telling us to refund people before they  
16 manifest into charge-backs, and this is an example of one that  
17 he recommended we do so.

18 Q. Let's look now at the email on Page 1, the email from Ray  
19 Quiles. Can we blow that up, please, Ms. Lee.

20 Do you see that email from Ray going up on your  
21 screen?

22 A. Yes.

23 Q. I am going to direct your attention to the third sentence  
24 in that. What is that sentence, beginning messages like this?

25 A. Messages like this need an assassin's mentality to deal

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1 with the client and move on.

2 Q. What are the next few sentences?

3 A. This is a Stage 5 cleaner that declares rape. She has 3, 4  
4 totals in parens, other charges with the sale also manifest  
5 into charge-backs.

6 Q. Then he says he recommends some sort of retention  
7 department. What is a retention department?

8 A. A retention department would be individuals who would be in  
9 charge of dealing with keeping customers aboard or making  
10 decisions to cut ties and move on.

11 THE COURT: To your knowledge, is it part of the job  
12 of a fulfillment center to help you avoid charge-backs?

13 THE WITNESS: Yes, sir.

14 BY MS. FLETCHER:

15 Q. Is one of the ways that the fulfillment center helps you  
16 avoid charge-backs by sending you communications like this?

17 A. Yes, ma'am.

18 Q. Does this type of communication, is this a typical  
19 communication from Mr. Quiles to you regarding these  
20 charge-backs?

21 MR. PAUL: Objection to the form.

22 THE COURT: Yes, sustained as to form.

23 BY MS. FLETCHER:

24 Q. Did Mr. Quiles send you communications like this after this  
25 one in November of 2014?

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1 A. Yes.

2 Q. For how long?

3 A. I can't take a guess, as per your Honor's instructions  
4 earlier. I can't say definitely.

5 Q. Weeks?

6 MR. SCHMIDT: Objection, your Honor.

7 THE COURT: Wait. I don't want to mislead you. A  
8 guess is "I have no idea" is a guess.

9 Knowing something is "I saw that it and I know it,"  
10 and there is some area in-between where you have reason to  
11 believe this happened or that happened or the number is in the  
12 range of this. If it is in-between, the jury is entitled to  
13 hear it as long as you have some basis and experience for it  
14 and can testify to that or are asked about it.

15 What I don't want to hear and what the jury doesn't  
16 want to hear are I guess what I referred to in the press is  
17 wild eye guesses. Does that make sense?

18 THE WITNESS: Yes, sir.

19 THE COURT: No wild eye guesses, but if you can give  
20 reasonable either estimate or the specific because you have  
21 some basis for doing so, do so.

22 THE WITNESS: Yes, sir.

23 THE COURT: Proceed.

24 A. To answer your question, ma'am, I'd say through the end of  
25 the time when we were selling similar products where we have

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1 Ray Quiles as our fulfillment company, which would be at least  
2 for about at year after this email which would bring us to the  
3 end of 2015, possibly early 2016.

4 BY MS. FLETCHER:

5 Q. Thank you.

6 A. You're welcome.

7 Q. Are you familiar with the term rebuttal in the  
8 telemarketing industry?

9 A. Yes, ma'am.

10 Q. What is a rebuttal?

11 A. A client objection.

12 Q. A client objection to what?

13 A. To purchasing products.

14 Q. So do rebuttals happen before or after the sale is made?

15 A. During.

16 Q. During the sale?

17 A. Yeah. It could be after as well, but generally before the  
18 sale is made or when that process, when the attempt is being  
19 made.

20 Q. When you did sales calls for biz-op, did you hear customers  
21 give you rebuttals for objections to the sale you were trying  
22 to make?

23 A. Yes, ma'am.

24 Q. Based on those calls, are you familiar with the type of  
25 objections or rebuttals that customers made during the sales

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1 call?

2 A. Yes, ma'am.

3 Q. What are some of the reasons customers give to not make a  
4 purchase for a biz op product?

5 MR. SCHMIDT: Objection. We are talking about two  
6 different time frames here.

7 THE COURT: She can establish those time frames.

8 MR. SCHMIDT: She has. This is when he was making  
9 sales calls, and that appears before this case.

10 MS. FLETCHER: I am happy to lay a stronger  
11 foundation.

12 THE COURT: Go ahead.

13 BY MS. FLETCHER:

14 Q. Mr. Sinclair, you testified yesterday that sometimes you  
15 would speak to a customer when the customer did not want to  
16 sign the contract during the compliance call. Do you remember  
17 that?

18 A. Yes, ma'am.

19 Q. Did you also hear customer rebuttals during those calls?

20 A. Yes, ma'am.

21 THE COURT: Let me see if I understand.

22 "Rebuttals" seems to be a fancy name for a pushback  
23 the client is giving while the sales call is going on; in other  
24 words, the salesman says X, and the customer says Y, or what  
25 about something else or doesn't sound right to me. It is just



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1 in the ebb and flow of conversation, as you said, pushback.

2 Is that what a rebuttal is?

3 THE WITNESS: Yes, sir, your Honor.

4 THE COURT: Okay.

5 BY MS. FLETCHER:

6 Q. When you were speaking to customers who didn't want to sign  
7 a contract, were there certain types of rebuttals that you  
8 heard often?

9 A. Yes, ma'am.

10 Q. What are some of those types of rebuttals or what was the  
11 common way that a customer would push back against signing the  
12 contract?

13 A. The most common, I'd say, would be I don't want to spend  
14 any more money or I don't want to spend money until I make  
15 money, or I can't afford my credit card payments now, I can't  
16 afford to spend any more money on a monthly basis, not just an  
17 overall figure. Those would be the most common.

18 Q. Focusing on the example that you just gave, I don't want to  
19 spend any more money until I make money, how did you respond to  
20 that pushback?

21 A. That would be responded to by saying well, if you truly  
22 plan to give your business the best shot of being successful,  
23 you want to put your best foot forward from the very beginning  
24 rather than implementing things piece-by-piece, that type of  
25 approach. My semantics may be a little off. It has been a few

IAPJKET1

Sinclair - direct

1 years, but that is basically what it would be.

2 Q. What message was that meant to convey to the customer?

3 MR. SCHMIDT: Objection, your Honor.

4 THE COURT: What did you intend by saying those words?

5 THE WITNESS: Spend money now instead of later.

6 BY MS. FLETCHER:

7 Q. For what purpose? Spend money why?

8 A. So we can make money.

9 Q. So that is how you responded to customers who pushed back  
10 to you? How, if at all, did you instruct your salespeople to  
11 respond to similar pushback?

12 A. With a similar counter-rebuttal.

13 Q. Sorry? What was the word you used?

14 A. With a similar counter-rebuttal.

15 Q. Are you familiar with how Aresh Ketabchi instructed the  
16 salespeople to respond to that particular pushback?

17 A. The same way.

18 Q. Let's talk about charge-backs.

19 You testified yesterday that Michael Finocchiaro was  
20 responsible for addressing charge-backs. Do you remember that?

21 A. Yes, ma'am.

22 Q. Did there come a time during the 2014 to 2015 time-frame  
23 that you were made aware of an increase in charge-backs?

24 A. Yes, ma'am.

25 Q. How were you made aware of that increase?

IAPJKET1

Sinclair - direct

1 A. Because the first sign is money was being taken out of our  
2 accounts in alarming rates.

3 Q. Approximately when was that?

4 A. Right around Labor Day 2014 and all through the fall of  
5 2014 it became very, very bad.

6 Q. Did you come to understand why the charge-backs were  
7 increasing at that time?

8 A. Yes, ma'am.

9 Q. How did you come to that understanding?

10 A. Conversation with a sales rep about data being stolen from  
11 our database and being given to an individual who we had fired  
12 previously, sales were being made without our knowledge and  
13 charge-backs were being encouraged so they could charge people  
14 if there wasn't enough room.

15 Q. To clarify, who was encouraging your prior customers to  
16 charge-back?

17 A. The individual on the outside, his name is Michael Pizzaro.

18 Q. What, if any, steps did you take to address that cause for  
19 the increase in charge-backs?

20 A. We hired an attorney.

21 Q. What did your attorney do?

22 A. Sued Michael Pizzaro, Joe Sickles, a few other people were  
23 sued initially, but then it was dropped. Steven Aladenoye  
24 being one of them. It was primarily just against Joe Sickles  
25 and Michael Pizzaro.

IAPJKET1

Sinclair - direct

1 Q. Who is the lawyer you hired to initiate that lawsuit?

2 A. Vafa Sarmasti.

3 Q. How did you first become acquainted with Mr. Sarmasti?

4 A. Arash introduced us.

5 Q. Did you hire Mr. Sarmasti to do any other work for your  
6 floor?

7 A. Yes, ma'am.

8 Q. What did you hire him to do?

9 A. Primarily situations where we had customer complaints that  
10 got to an attorney of the customers or any agent complaints,  
11 attorney generals in different states.

12 Q. What did Mr. Sarmasti do with respect to those complaints?

13 A. Tried to find a resolution that would cost us the least  
14 amount of money.

15 Q. In addition to this lawsuit that you implemented, did you  
16 take any other steps to remedy the increase in charge-backs?

17 A. Yes, ma'am.

18 Q. What steps did you take?

19 A. We hired an individual named Paul Curtis to monitor sales  
20 calls.

21 Q. Is this the call monitoring we discussed yesterday?

22 A. Yes, ma'am.

23 Q. What other steps did you take?

24 A. We implemented later on, we implemented what we call  
25 retention out of the sales reps' paychecks.

IAPJKET1

Sinclair - direct

1 Q. Explain how your retention protocol worked.

2 A. For each individual sales representative, individuals who  
3 were making the sales, based on whatever their cancellation  
4 rate was, we would hold that same percentage of their check in  
5 retention to try to offset at least a piece of the money we  
6 were losing due to said charge-backs.

7 Q. Can you give an example.

8 If you had detected a salesperson, for example, had 20  
9 percent of his sales resulted in charge-backs, what steps would  
10 you take with respect to that salesperson's 20 percent?

11 A. So to put it into figures, if that salesperson's paycheck  
12 was \$1,000.00, we would hold 200 of it.

13 Q. When, if at all, would you return that \$200.00 to the  
14 salesperson?

15 A. If a customer was saved, meaning kept on board, the way  
16 that we did it, though, it was determined quarterly. So, for  
17 example, if it's January, we're looking at quarter four of the  
18 previous year, and a figure is calculated on how many cancels  
19 that person had versus respective sales. So we figure out the  
20 percentage that way. So it would just adjust quarterly.

21 Q. If a sales person's charge-backs went down, would they get  
22 a portion of their retention back?

23 A. Their retention percentage would just drop moving forward.

24 Q. How, if at all, did that retention program improve the  
25 number of charge-backs that you were seeing?

IAPJKET1

Sinclair - direct

1 A. It did help it at one time.

2 Q. Approximately when was this retention program implemented?

3 A. I'd say anywhere from late '14 to early '15.

4 Q. Did there come a time when the charge-backs continued to  
5 increase after that retention program?

6 A. I can't say they increased, but they were certainly a  
7 significant issue.

8 Q. Approximately what percentage of the sales on the floor  
9 were charge-backs in the middle of 2015?

10 A. Roughly 20 percent.

11 Q. Did you implement any other procedures to address the 20  
12 percent charge-backs?

13 A. I did.

14 Q. What procedures did you implement?

15 A. Over the summer in 2015, we implemented another policy  
16 where if any sales rep had a charge-back, let's just say of  
17 \$3,000, that \$3,000 is now their full responsibility, so \$3,000  
18 cash would now be taken from that sales rep's paycheck.

19 Q. How did the sales team react to that policy?

20 A. Poorly.

21 Q. Did anyone quit?

22 A. Several people.

23 Q. Who quit?

24 A. Arash left, Pete DiQuarto left, Andrew left, Reagan left,  
25 Luis left, Steve, everybody just left.

IAPJKET1

Sinclair - direct

1 Q. Let's talk about Arash's departure. Did you discuss with  
2 Arash what he was going to do when he left?

3 MR. SCHMIDT: Objection, your Honor.

4 THE COURT: I'll allow that. Yes or no?

5 THE WITNESS: Yes.

6 BY MS. FLETCHER:

7 Q. What, if anything, did he tell you he was doing?

8 MR. SCHMIDT: Objection, your Honor; hearsay.

9 THE COURT: Sustained.

10 MS. FLETCHER: Your Honor, may we be heard at sidebar?

11 THE COURT: Yes, but move on if you can and you can  
12 come back. I don't want to have so many sidebars.

13 MS. FLETCHER: I am not sure I can move on.

14 THE COURT: All right, sidebar.

15 (Continued on next page)

IAPJKET1

Sinclair - direct

1 (At sidebar)

2 THE COURT: The purpose of my commenting in open court  
3 after the last sidebar was I realized you're giving a preview  
4 of your entire direct if you give the defense the same book  
5 that you give the witness, so I was saying you can do it on a  
6 document-by-document basis.

7 MS. FLETCHER: Understood.

8 THE COURT: I think the real answer is for the defense  
9 to be able to find the document itself more quickly so that we  
10 can move forward, but if they can't --

11 MS. FLETCHER: May I go back to the podium and tell  
12 them the next three exhibits?

13 THE COURT: All right. It strikes me that it is not  
14 in furtherance of the conspiracy. I take it that is what you  
15 were saying?

16 MR. PAUL: Yes. I join in that objection.

17 MS. FLETCHER: It is, your Honor, even after Arash  
18 leaves, Mr. Sinclair's floor continued to have business  
19 dealings related to charge-backs because Mr. Sinclair was using  
20 Arash's merchant account.

21 THE COURT: Because Mr. Sinclair was using Arash's --

22 MS. FLETCHER: Once Arash leaves, he and the floor  
23 continue to --

24 THE COURT: What do you intend to adduce from what  
25 Arash said he was going to do?



IAPJKET1

Sinclair - direct

1 MS. FLETCHER: He was going to start his own floor so  
2 he was taking some of the salespeople with him.

3 THE COURT: So ask this man what Arash did after he  
4 left him.

5 MS. FLETCHER: Okay.

6 THE COURT: Let's go.

7 (Continued on next page)

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IAPJKET1

Sinclair - direct

1 (In open court)

2 BY MS. FLETCHER:

3 Q. Mr. Sinclair, to your knowledge, what did Arash Ketabchi do  
4 for work after he stopped working on your sales floor?

5 A. He started up his own sales floor.

6 Q. What was the name of that sales floor?

7 A. Al Business Consultants.

8 Q. Who, if anyone, that had previously worked for you went to  
9 work for Arash?

10 A. To my knowledge, Andrew Owimrin, Reagan Owimrin, Jen Luluna  
11 and Lucette Sarsuala.

12 Q. Who are Ms. Luluna and Ms. Sarsuala?

13 A. They were formerly two of my appointment setters/compliance  
14 officers.

15 Q. Mr. Sinclair, I am going to hand up what has been marked  
16 for identification as Government Exhibit 122 and 122 T and ask  
17 you to take a look at those.

18 A. Yes, ma'am.

19 Q. Mr. Sinclair, do you recognize Government Exhibit 122?

20 A. Yes, ma'am.

21 Q. What is Government Exhibit 122?

22 A. 122 is a CD, with the contents of the CD is the phone call  
23 that is transcribed in 122 T. The people on this -- okay.

24 Q. No. You may continue.

25 A. The people on this recording are Arash Ketabchi, Andrew

IAPJKET1

Sinclair - direct

1 Owimrin, Reagan Owimrin and who I believe to be Jen Lulunaj as  
2 well.

3 Q. Did you listen to this recording in advance of your  
4 testimony today?

5 A. Yes, ma'am.

6 Q. Taking a look at Government Exhibit 122, how do you know  
7 that the recording on that CD is the recording you listened to?

8 A. My initials are on it.

9 Q. When you listened to that recording, did you prepare --  
10 withdrawn.

11 When you listened to that recording, were you  
12 presented with a draft transcript of the call on that  
13 recording?

14 A. Yes, ma'am.

15 Q. Did you provide edits to the transcript of that recording?

16 A. Yes, ma'am.

17 Q. When you were provided the draft transcript of that  
18 recording, did the draft include, for example, who was speaking  
19 on the recording? Did it identify names of the speakers?

20 A. Yes.

21 Q. When the draft was provided to you?

22 A. Some of it, yes.

23 Q. Sorry? Mr. Sinclair, did you provide edits to the draft?

24 A. Yes, ma'am.

25 Q. What, if any, edits did you make?

IAPJKET1

Sinclair - direct

1 A. Some name changes, some of the verbiage was incorrect  
2 according to what I heard.

3 Q. I now see the issue.

4 Mr. Sinclair, did you listen to the recording once  
5 before being presented with a draft of the transcript?

6 MR. SCHMIDT: Your Honor, objection; leading  
7 questions.

8 THE COURT: I think I understand the issue also. I  
9 will allow it to go forward.

10 Mr. Sinclair, did you provide to the government the  
11 attributions of the speakers; in other words, do you say that  
12 is Andrew Owimrin, that is Arash Ketabchi, that is Reagan  
13 Owimrin?

14 THE WITNESS: Yes, sir, your Honor.

15 THE COURT: Next.

16 BY MS. FLETCHER:

17 Q. To be clear, did the government ever tell you who the  
18 speakers were on the recording or did you tell the government?

19 A. I told the government.

20 Q. The draft transcript that you were provided, did that draft  
21 transcript get edited by you?

22 A. Yes, ma'am.

23 Q. Approximately how many times?

24 A. Several.

25 Q. The transcript that you have in your hand as --

IAPJKET1

Sinclair - direct

1 THE COURT: What was the purpose of your edits?

2 Edits are changes, right.

3 THE WITNESS: Yes.

4 THE COURT: Why were you making changes to the draft  
5 transcript?

6 THE WITNESS: For accuracy purposes.

7 BY MS. FLETCHER:

8 Q. The transcript that is in front of you at Government  
9 Exhibit 122 T, does that transcript fairly and accurately  
10 reflect the parties to the recording and the words that the  
11 parties said, as edited by you?

12 MR. SCHMIDT: Objection. Simply that --

13 THE COURT: Just a moment. (Pause)

14 What is your objection?

15 MR. SCHMIDT: The evidence is the actual recording.

16 THE COURT: They will be instructed of that, yes.

17 MR. SCHMIDT: The transcript is obviously his best  
18 efforts, but --

19 THE COURT: Objection overruled. I am going to  
20 instruct the jury.

21 MS. FLETCHER: Your Honor, the government offers  
22 Government Exhibit 122 and would ask the jury be permitted to  
23 review 122 T as an aid.

24 MR. SCHMIDT: I have no objection to that, your Honor.

25 MR. PAUL: No objection.

IAPJKET1

Sinclair - direct

1 THE COURT: Ladies and gentlemen, this is all rather  
2 simple. I am admitting the disc 122. That is evidence. That  
3 is a recording apparently of a telephone conversation, okay?

4 To assist you, and I assume the government is about to  
5 play that, that's correct, or at least a portion of that?

6 MS. FLETCHER: Yes, your Honor.

7 THE COURT: To assist you when you hear the recording,  
8 I'm allowing you to see a transcript of the recording, but that  
9 is just an aid to you. The actual evidence is the recording  
10 itself. The transcript is simply an aid to assist you in  
11 deciding what you're hearing.

12 If you hear something that's different than what is on  
13 the transcript, it's what you hear that's the evidence. Okay.  
14 Very simple. A lot of back-and-forth here, but quite  
15 straightforward. Next question.

16 MS. FLETCHER: Your Honor, I would ask that Ms. Lee be  
17 permitted to publish Government Exhibit 122 and play the audio.

18 THE COURT: Yes. Proceed. Would they need the  
19 transcript?

20 MS. FLETCHER: Yes, they do. May I hand those out,  
21 your Honor?

22 THE COURT: Yes.

23 (Government's Exhibit 122 received in evidence)

24 (Pause)

25 BY MS. FLETCHER:

IAPJKET1

Sinclair - direct

1 Q. To clarify one point while the transcripts are being handed  
2 out, do you see the date on the front page of this transcript?

3 A. Yes, I do.

4 Q. Do you have any idea where that date came from?

5 A. I don't.

6 Q. Did you provide that date?

7 A. I did not.

8 (Government Exhibit 122 was played)

9 MS. FLETCHER: May I have a moment, your Honor?

10 THE COURT: Yes.

11 (Off-the-record discussion)

12 MS. FLETCHER: Your Honor, would you like me to  
13 collect the draft transcripts?

14 THE COURT: Yes, please.

15 (Pause)

16 THE COURT: And if the government would be so kind,  
17 the court would appreciate a transcript as well.

18 MS. FLETCHER: I apologize, your Honor.

19 THE COURT: That is all right. Let's move forward.

20 (Pause)

21 BY MS. FLETCHER:

22 Q. Mr. Sinclair, after Arash stopped working for you, did you  
23 and Arash continue to communicate about your business?

24 A. Yes.

25 Q. Without saying specifically what he said to you, what, in

IAPJKET1

Sinclair - direct

1 substance, did the two of you discuss?

2 A. We had an agreement where charge-backs were supposed to be  
3 paid to each other depending on dates and where they were, what  
4 merchant account they were run through.

5 (Continued on next page)



IAP8KET2

Sinclair - Direct

1 Q. Can you explain what that arrangement was?

2 A. Yes. So June 29 we implemented the last policy that you  
3 had asked me about, as far as retention is concerned.

4 Q. June 29th of what year?

5 A. 2015.

6 Q. And what was the last policy that we discussed?

7 A. Where sales reps were responsible for the full amount of  
8 the sale if charged back.

9 Q. How did your arrangement with Arash Ketabchi relate to that  
10 June 29th date?

11 A. Anything after that date I was supposed to be compensated  
12 for. Anything before that date I would pay for him.

13 Q. When you say anything before that date, what do you mean by  
14 "anything"?

15 A. Sales made.

16 Q. So if a sale was made prior to June 29, 2015 and a customer  
17 charged back, who was responsible for covering the amount of  
18 that chargeback?

19 A. Prior to June 29, myself and Michael Finocchiaro.

20 Q. And if a sale was made after June 29th and a customer  
21 charged back, who was responsible for covering the amount of  
22 the that chargeback?

23 A. Arash.

24 Q. And is this arrangement with respect to any particular  
25 account?

IAP8KET2

Sinclair - Direct

1 A. I believe this was -- there's some gray area, but I believe  
2 this was just for his A1 account -- let me think for a second.

3 The A1 account, prior to June 29, we would have had to  
4 have been responsible for it, because that's his account and we  
5 are no longer using A1 anymore.

6 Q. What about the Element merchant account that we discussed  
7 yesterday?

8 A. Element as well.

9 Q. So who was responsible and who was continuing to use the  
10 Element merchant account after Arash left your floor?

11 A. Arash.

12 Q. When you continued to communicate with Arash after he left  
13 your floor, did you communicate with him directly or did you  
14 communicate through a third party?

15 A. We communicated directly for a time. And then we  
16 communicated through his brother Steve.

17 Q. What did you communicate about?

18 A. Chargebacks and documentation pertinent to those  
19 chargebacks.

20 Q. What was your understanding of how Steve was involved in  
21 those chargebacks?

22 A. That he was helping Arash fight those chargebacks with the  
23 merchants themselves.

24 MS. FLETCHER: Ms. Lee, can we please pull up what has  
25 been marked for identification as Government Exhibit 411.

IAP8KET2

Sinclair - Direct

1 Q. Do you recognize Government Exhibit 411 that's in front of  
2 you?

3 A. Yes, ma'am.

4 Q. What is it?

5 A. This is an e-mail that was sent from Steve Ketabchi to  
6 Arash and Heidi Brownfield.

7 Q. Are you -- actually, Mr. Sinclair, can you look at the  
8 version of 411 that's in your binder?

9 In particular, if you could look at the third page of  
10 that document.

11 A. OK.

12 Q. What is reflected on the third page of that document?

13 A. It's an e-mail from Heidi to Arash, Michael Wigdore, Alan  
14 Waddle, and myself.

15 Q. Is anyone listed in the "to" field?

16 A. I'm sorry. Steve Ketabchi as well.

17 MS. FLETCHER: The government offers Government  
18 Exhibit 411.

19 MR. SCHMIDT: How many pages are you offering? All of  
20 it?

21 MS. FLETCHER: The e-mail and the attachment, which is  
22 about 15 pages.

23 MR. SCHMIDT: No objection.

24 THE COURT: Admitted.

25 (Government's Exhibit 411 received in evidence)

IAP8KET2

Sinclair - Direct

1 MS. FLETCHER: Ms. Lee, can we please publish page 3  
2 of the e-mail we were just discussing.

3 Q. Mr. Sinclair, I am going to ask you to just flip through  
4 the pages that follow page 3, and if you could explain what is  
5 reflected in those pages.

6 A. This is a lead list -- I'm sorry. It's not a lead list.

7 This is a request for documentation from the merchant  
8 themselves.

9 Q. Documentation related to what?

10 A. To customers that were sold.

11 Q. To particular transactions?

12 A. Yes, ma'am.

13 Q. Do you see the data for those transactions in the remainder  
14 of this document?

15 A. Do I see the date or data?

16 Q. The data.

17 A. Yes.

18 Q. Then taking a look again at page 3 of this document, the  
19 e-mail from Heidi, who is Heidi Brownfield?

20 A. Heidi Brownfield is an employee of a merchant company.

21 Q. And you mentioned that this is an e-mail to Arash and  
22 Steve. What e-mail account did Arash use?

23 A. Ketabchi.arash@gmail.com.

24 Q. What e-mail account did Steve use?

25 A. Positivefaith@gmail.com.

IAP8KET2

Sinclair - Direct

1 Q. Now take a look at page 2, the follow-up e-mail in this  
2 chain.

3 What does Heidi say to you in this document?

4 A. She says she still has not received any documentation for a  
5 woman named Diane Weissenberger.

6 Q. For what charge?

7 A. \$14,495.

8 Q. And if you flip all the way to the back of Government  
9 Exhibit 411, really the last five pages, what do you see?

10 A. I see her agreement.

11 MS. FLETCHER: Ms. Lee, can we please pull up this  
12 page. I'm not sure what page it is of the document, but it's  
13 fifth from the end.

14 A. And her identification card as well.

15 MS. FLETCHER: If we could just blow up the top  
16 paragraph of that page.

17 Q. Do you see the entity listed here?

18 A. I do.

19 Q. What is the entity?

20 A. A1 Business Consultants LLC.

21 Q. Do you see the address of that entity?

22 A. Yes.

23 Q. What is the address?

24 A. 189 Berdan Ave, Suite 418, in Wayne, New Jersey.

25 Q. Are you familiar with that address?

IAP8KET2

Sinclair - Direct

1 A. Yes.

2 Q. What is at that address?

3 A. Arash's home address.

4 Q. What, if anything, does that address tell you about who  
5 made this particular sale?

6 A. Someone working for Arash, or himself.

7 Q. Would a sale mate on your floor have that address on their  
8 contract?

9 A. No, ma'am.

10 Q. Now let's go to the first page of 411, please.

11 Who is this e-mail from?

12 A. From Steve Ketabchi to Heidi at the merchant company, and  
13 Arash as well.

14 Q. Are you copied on this e-mail?

15 A. On this e-mail, no, I am not.

16 Q. What is Steve saying in this e-mail?

17 A. He is giving Heidi Diane Weissenberger's contract, and from  
18 my interpretation, it looks like he is asking her to lower  
19 their merchant fee from 17 percent to 6 percent. And is also  
20 asking to -- he is asking for a credit that appears to be held  
21 by the merchant. And he is also asking, as a fourth and final  
22 item here, that I am never CC'd again.

23 Q. Let me show you what has been marked for identification as  
24 Government Exhibit 407.

25 Do you recognize 407? And I am going to ask you to

IAP8KET2

Sinclair - Direct

1 take a look at the second page of 407.

2 A. Yes, I do.

3 Q. Do you recognize this communication?

4 A. Yes, ma'am.

5 Q. Is this a continuation of the last e-mail chain --

6 A. Yes.

7 Q. -- that we looked at?

8 A. Yes.

9 MS. FLETCHER: The government offers Government  
10 Exhibit 407.

11 MR. SCHMIDT: I have no objection.

12 MR. PAUL: No objection.

13 THE COURT: Admitted.

14 (Government's Exhibit 407 received in evidence)

15 MS. FLETCHER: Can we please publish and blow up the  
16 bottom e-mail -- I'm sorry, the top e-mail on page 2.

17 Q. Who is this e-mail from, Mr. Sinclair?

18 A. From Heidi.

19 Q. Let's go to the next e-mail in the chain chronologically,  
20 which is the bottom e-mail on page 1.

21 Who is the sender of this e-mail?

22 A. Arash.

23 Q. Who is copied?

24 A. He sends it to Heidi. He copies Steve Ketabchi, Michael  
25 Wigdore, Alan Waddle, and me.

IAP8KET2

Sinclair - Direct

1 Q. Let's take a look at the final e-mail, the top e-mail in  
2 this chain on page 1.

3 What is Heidi saying here in response to Arash's  
4 question?

5 A. That merchant companies can ask for documentation --

6 MR. SCHMIDT: Objection, your Honor. The document  
7 speaks for itself and not the interpretation of the witness.

8 MS. FLETCHER: I am happy to rephrase the question,  
9 your Honor.

10 THE COURT: Go ahead.

11 Q. Based on your experience dealing with merchant accounts,  
12 did merchants sometimes ask for documentation related to the  
13 account long after the account had been opened?

14 A. Yes, ma'am.

15 Q. What was your understanding of the purpose of that?

16 A. Generally they would want to keep chargebacks to a minimum.

17 Q. Can you take a look at the second paragraph in that e-mail  
18 from Heidi.

19 A. So we are still looking at page 1 here?

20 Q. Page 1. The paragraph beginning "anyways."

21 A. Yes.

22 Q. Can you read what it says in the first -- it's actually one  
23 very long sentence, beginning "anyways."

24 A. "Anyways, considering that the account was ordered closed  
25 by MasterCard, and wasn't because we were able to throw Element



IAP8KET2

Sinclair - Direct

1 under the bus, it probably wasn't the best idea to settle the  
2 largest batch you've ever had and one of only three batches  
3 since August. Lots of red flags going off there."

4 Q. Who is copied on that e-mail?

5 A. Steve Ketabchi, admin at the merchant themselves, Alan at  
6 the merchant company, and myself. And it was sent to Arash  
7 Ketabchi.

8 Q. Are you familiar with the fact that Element had to be  
9 thrown under the bus?

10 A. I am.

11 Q. Did there come a point when the Element account was closed?

12 A. Yes, ma'am.

13 Q. What, if anything, were you asked to do with respect to the  
14 Element account?

15 A. Pay for it to be dissolved.

16 Q. When you say "pay for it to be dissolved," what  
17 specifically did you need to dissolve?

18 A. The existence of -- the active existence of Element itself.

19 Q. By that do you mean the entity or the merchant account?

20 A. The entity.

21 Q. Showing you what has been marked for identification as  
22 Government Exhibit 413.

23 Do you recognize Government Exhibit 413?

24 A. Yes.

25 Q. What is it?

IAP8KET2

Sinclair - Direct

1 A. An e-mail from Steve Ketabchi to Arash Ketabchi and me.

2 MS. FLETCHER: The government offers Government  
3 Exhibit 413.

4 MR. SCHMIDT: I have no objection, your Honor.

5 MR. PAUL: No objection.

6 THE COURT: Admitted.

7 (Government's Exhibit 413 received in evidence)

8 MS. FLETCHER: Please publish.

9 Q. Do you see that e-mail on your screen, Mr. Sinclair?

10 A. Yes, ma'am.

11 Q. Do you see the line, "We received a chargeback that was on  
12 your timeline"?

13 A. Yes, ma'am.

14 Q. Can you explain what that means?

15 A. That it was before June 29, 2015.

16 Q. And therefore subject to the agreement that you just  
17 discussed?

18 A. Yes, ma'am.

19 Q. What is Steve asking you for here?

20 A. He's asking for money. It doesn't quite say how much  
21 money. He is also asking for documentation on another sale  
22 that was made, it looks like in May, which would have been on  
23 my timeline as well. There's two separate transactions that it  
24 looks like he is referring to here.

25 Q. Again, what is the subject of this e-mail?

IAP8KET2

Sinclair - Direct

1 A. Chargeback deposit.

2 Q. Showing you what has been marked for identification as  
3 Government Exhibit 427.

4 Do you recognize Government Exhibit 427?

5 A. Yes.

6 Q. What is it?

7 A. This is a chargeback rebuttal response for a customer named  
8 Joe Freeland.

9 Q. Is it an e-mail?

10 A. It is, yes.

11 Q. Is there an attachment to that e-mail?

12 A. Yes.

13 Q. What is the attachment?

14 A. It's the chargeback rebuttal response for said customer Joe  
15 Freeland.

16 MS. FLETCHER: The government offers Government  
17 Exhibit 427.

18 MR. SCHMIDT: No objection.

19 MR. PAUL: No objection.

20 THE COURT: Admitted.

21 (Government's Exhibit 427 received in evidence)

22 MS. FLETCHER: Ms. Lee, can you please blow up the  
23 bottom portion of that e-mail, the first page of the e-mail.

24 Q. Who is the sender of this e-mail?

25 A. Steve Ketabchi.

IAP8KET2

Sinclair - Direct

1 Q. Is that a different e-mail address?

2 A. Yes, ma'am.

3 Q. What is the e-mail address he is using now?

4 A. Steve@albusinessconsultants.com.

5 Q. Who is this e-mail sent to?

6 A. To me and Jolaina.

7 Q. Which e-mail account is yours and which is Jolaina's?

8 A. My is olivebranchmarketingllc@gmail.com. Jolaina's is  
9 olivebranchmarketing1@gmail.com.

10 Q. Can you read the first line of Steve Ketabchi's e-mail to  
11 you?

12 A. "How would you rate this chargeback for its potential for a  
13 reversal?"

14 Q. Is CB an abbreviation for chargeback?

15 A. Yes, ma'am.

16 Q. Take a look at the third page of the document.

17 MS. FLETCHER: Ms. Lee, if we could pull that up.

18 Q. Do you recognize this type of document?

19 A. Yes, ma'am.

20 Q. What is this document?

21 A. This is something that you receive in the mail, or via  
22 e-mail, when you receive a chargeback.

23 Q. When you received forms like this at Olive Branch, did they  
24 have the contact person filled in or the phone number of the  
25 contact person filled in?

IAP8KET2

Sinclair - Direct

1 A. That was, I believe, generally established at the time of  
2 the account opening. I don't remember filling my information  
3 out ever on a chargeback debit advice form.

4 Q. Did you typically handle these at Olive Branch Marketing?

5 A. Chargebacks?

6 Q. Yes.

7 A. No.

8 Q. Do you see the attachments that follow this, the next page  
9 in particular?

10 A. The back of this one?

11 Q. Yes.

12 A. I do.

13 Q. Do you remember responding to Steve's question asking you  
14 for feedback?

15 A. Specifically, no.

16 Q. How often did you receive communications like this from  
17 Steve?

18 A. During the end of 2015, frequently, more than I wanted.

19 Q. How frequently?

20 A. A few times a week, I would say.

21 Q. Did you communicate with him only by e-mail or did he call  
22 you as well?

23 A. He called as well.

24 MS. FLETCHER: Let's pull up what has been marked for  
25 identification as Government Exhibit 439.

IAP8KET2

Sinclair - Direct

1 Q. Do you recognize Government Exhibit 439?

2 A. Yes.

3 Q. What is it?

4 A. This is an e-mail correspondence between Steve Ketabchi,  
5 Arash Ketabchi -- on the bottom it's just between me and Steve.

6 Q. And at the top?

7 A. Arash is included as well with Steve.

8 MS. FLETCHER: The government offers 439.

9 MR. SCHMIDT: I have no objection.

10 MR. PAUL: No objection.

11 THE COURT: Admitted.

12 (Government's Exhibit 439 received in evidence)

13 MS. FLETCHER: Can we blow up the bottom half of that  
14 e-mail, the e-mail from Bill to Steve.

15 Q. I am not going to ask you to read the e-mail, Mr. Sinclair,  
16 but in general, what is the status of your relationship with  
17 Arash at this time?

18 A. Poor. Trending downwards.

19 Q. For what reason?

20 A. A breach of our previous agreement that we had discussed.

21 Q. By whom?

22 A. Arash.

23 Q. How did he breach the agreement?

24 A. He didn't pay me for what we agreed upon.

25 Q. What, if anything, are you telling Steve in this e-mail

IAP8KET2

Sinclair - Direct

1 about how you are going to behave going forward with respect to  
2 that agreement?

3 A. That I am no longer going to pay.

4 Q. Let's take a look at what has been marked for  
5 identification as Government Exhibit 443 and -- let's start  
6 with 443.

7 Mr. Sinclair, can you take a look at 443 and 444 in  
8 your binder?

9 A. Yes.

10 Q. Do you recognize 443 and 444?

11 A. 443 I recognize.

12 444 I recognize as well.

13 Q. What are 443 and 444?

14 A. A list of the chargebacks that I was owed from Arash, and  
15 correspondence with Steve Ketabchi explaining that.

16 Q. Who prepared the list of chargebacks?

17 A. I did.

18 Q. To whom did you send it?

19 A. Steve Ketabchi.

20 MS. FLETCHER: The government offers Government  
21 Exhibit 443 and 444.

22 MR. SCHMIDT: No objection, your Honor.

23 MR. PAUL: No objection.

24 THE COURT: Admitted.

25 (Government's Exhibits 443 and 444 received in

IAP8KET2

Sinclair - Direct

1 evidence)

2 Q. If we could start with 444, please, and take a look at the  
3 fourth page.

4 Directing your attention, Mr. Sinclair, to the bottom  
5 of the fourth page, who is the sender of that e-mail?

6 A. Steve Ketabchi.

7 Q. The e-mail begins "my brother said"?

8 A. Yes.

9 Q. What do you understand Steve to be doing here?

10 A. Basically just talking to Arash through Steve, so he is  
11 paraphrasing what Arash is telling him.

12 Q. What, in general, is the substance of this e-mail?

13 A. He is telling me that he never used any of those accounts,  
14 that Jason Sager was winning the disputes, that sales reps were  
15 given retention checks.

16 Q. What, if anything, does he say about which account Andrew  
17 Owimrin used?

18 A. Arash's.

19 Q. If we could go to the top of the page.

20 You see your response, Mr. Sinclair?

21 A. I do.

22 Q. What is the message you are conveying to Steve here?

23 A. I am letting him know that I am tired of being questioned  
24 and that what Arash is telling Steve, and then Steve is telling  
25 me, is just not factual.



IAP8KET2

Sinclair - Direct

1 Q. OK.

2 A. And that nobody got a retention check.

3 Q. After Arash stopped working on your floor, what, if  
4 anything, happened to your flow of leads for biz-op sales?

5 A. It was eliminated.

6 Q. Do you have an understanding as to why it was eliminated?

7 A. Yes.

8 Q. What is that understanding?

9 A. That Arash was now getting all those leads.

10 Q. From whom was he getting those leads?

11 A. I'd say Ryan Hult.

12 Q. In the latter half of 2015, did you continue to sell  
13 biz-op?

14 A. We had to stop because we didn't have those leads anymore.

15 Q. What, if anything, did you start to sell instead?

16 A. Debt services.

17 Q. What do you mean when you say you started to sell debt  
18 services?

19 A. Debt elimination services.

20 Q. Did you have leads for potential debt services sales?

21 A. I did.

22 Q. How did you come to have those leads?

23 A. Because these were people we already had sold biz-op to.

24 Q. Let's take a look at what has been marked for  
25 identification as Government Exhibit 457.

IAP8KET2

Sinclair - Direct

1 Do you recognize 457, sir?

2 A. Yes.

3 Q. How do you recognize it?

4 A. This is an e-mail between myself and one of Jason Sager's  
5 employees, Samantha Kelly.

6 Q. How, if at all, did Jason Sager have to do with your debt  
7 sales?

8 A. He came up with the entire program; it was him fulfilling  
9 it and his staff.

10 Q. Can you describe briefly what the product was that you were  
11 selling to customers when you sold them debt?

12 A. So the product was a process that was designed to help  
13 customers who had credit card debt reduce that debt.

14 THE COURT: Was some of it the same debt that had been  
15 incurred by their purchasing biz-op services from you?

16 THE WITNESS: Yes, sir, your Honor.

17 Q. When your sales floor was calling prospective customers to  
18 sell them debt, what leads were you using?

19 THE COURT: You weren't selling them debt, were you?

20 THE WITNESS: We were selling them a program that was  
21 designed to help them get out of debt.

22 THE COURT: Debt elimination.

23 THE WITNESS: Yes.

24 MS. FLETCHER: Thank you, your Honor.

25 Q. You were selling them debt elimination services?

IAP8KET2

Sinclair - Direct

1 A. Yes.

2 Q. Apart from the leads that you already had from your biz-op  
3 sales, did you purchase other leads?

4 A. Yes.

5 Q. From whom did you purchase those leads?

6 A. Various people.

7 Q. Do you see Government Exhibit 457 on your screen?

8 A. Yes.

9 MS. FLETCHER: The government offers Government  
10 Exhibit 457.

11 MR. SCHMIDT: I have no objection.

12 MR. PAUL: No objection.

13 THE COURT: Admitted.

14 (Government's Exhibit 457 received in evidence)

15 MS. FLETCHER: Can we blow up the top portion of that  
16 e-mail.

17 Q. What is the date on this e-mail chain, Mr. Sinclair?

18 A. May 26, 2016.

19 Q. What is the subject?

20 A. Diane Weissenberger.

21 Q. What is your understanding of what this e-mail chain is  
22 about?

23 A. This is --

24 Q. If it's helpful, we can blow up the bottom portion of that  
25 e-mail.

IAP8KET2

Sinclair - Direct

1 A. This is a check-in to see if Diane was called.

2 Q. During May of 2016, for what purpose would you be checking  
3 in to see if someone had called Diane?

4 A. To see if the welcome call was completed for the debt  
5 elimination program that she was signed up for.

6 Q. What was the name of the debt elimination program?

7 A. Consumer Shield.

8 Q. In the spring of 2016, did there come a time when you  
9 sought to purchase leads from Andrew?

10 A. Yes, ma'am.

11 Q. Did Andrew sell you leads?

12 A. Yes, ma'am.

13 Q. Let's take a look at -- I am going to ask you to flip  
14 through a handful of e-mails in your binder to speed this up.  
15 Government Exhibits 484, 485, 486 and 487.

16 Do you recognize the e-mails that are contained in 484  
17 through 487?

18 A. Yes, ma'am.

19 Q. What are those e-mail communications?

20 A. These are lead lists that Andrew sent to me.

21 Q. For what purpose did -- withdrawn.

22 Did you and Andrew discuss what you were selling at  
23 that time?

24 A. Yes.

25 THE COURT: Andrew was Andrew Owimrin, is that

IAP8KET2

Sinclair - Direct

1 correct?

2 THE WITNESS: Yes, sir.

3 Q. Did you tell him that you were selling debt consolidation  
4 services?

5 A. Yes, ma'am.

6 Q. What, if anything, did you pay Andrew for these leads?

7 A. I believe a percentage of whatever was sold. The same  
8 formula, just different numbers, different amounts, because it  
9 was a different business model.

10 MS. FLETCHER: The government offers Government  
11 Exhibit 484 through 487.

12 MR. SCHMIDT: I have no objection.

13 MR. PAUL: No objection.

14 THE COURT: Admitted.

15 (Government's Exhibits 484, 485, 486 and 487 received  
16 in evidence)

17 Q. Let's take a look at 487.

18 MS. FLETCHER: If we can blow up the top portion of  
19 that.

20 Q. Do you recognize this e-mail here at 487?

21 A. Yes, ma'am.

22 Q. What is the subject of the e-mail?

23 A. Grants.

24 Q. What is attached to the e-mail?

25 A. A list of victims who purchased grants.

IAP8KET2

Sinclair - Direct

1 Q. Are these the grant leads that we discussed yesterday?

2 A. Yes.

3 Q. Who is the sender of this list of leads?

4 A. Andrew Owimrin.

5 Q. Who were they sent to?

6 A. Me.

7 Q. That's your personal e-mail account?

8 A. Yes, ma'am.

9 Q. When Andrew was working on your floor, so prior to this  
10 e-mail communication, what was your understanding of the  
11 legitimacy of the grant pitch, in other words, the pitch that  
12 was provided to these leads?

13 A. It was a blatant lie.

14 Q. Did you hide that understanding from Mr. Owimrin?

15 A. No, ma'am.

16 Q. Conversely, did you tell him that the grant scheme was a  
17 blatant lie?

18 A. I don't recall a time when I said that as a matter of fact.

19 Q. Why not?

20 A. Because it was understood, everyone knew.

21 MR. SCHMIDT: Objection, your Honor.

22 THE COURT: I will allow it.

23 Q. You talked about two other lead types yesterday. The  
24 merchant processing leads. What was your understanding as to  
25 the legitimacy of the underlying merchant processing business

IAP8KET2

Sinclair - Direct

1 that your leads had purchased?

2 A. None.

3 Q. When you say "none," what do you mean?

4 A. There was none to it.

5 Q. There was no what?

6 A. Legitimacy to it.

7 Q. Again, did you hide that understanding from your  
8 salespeople, including Mr. Owimrin?

9 A. No, ma'am.

10 Q. Conversely, did you tell Mr. Owimrin that these leads were  
11 related to illegitimate businesses?

12 A. No.

13 Q. Why not?

14 A. Again, same thing, it was understood, everyone knew.

15 MR. SCHMIDT: Objection, your Honor.

16 THE COURT: Same ruling.

17 Q. The third type of lead, Web site affiliate marketing leads.  
18 What was your understanding of the underlying legitimacy of  
19 that business that these leads had purchased into?

20 A. No legitimacy.

21 Q. Did you hide that from your salespeople, including Mr.  
22 Owimrin?

23 A. No, ma'am.

24 Q. Conversely, did you tell Mr. Owimrin that these leads were  
25 operating illegitimate businesses?

IAP8KET2

Sinclair - Direct

1 A. No, ma'am.

2 Q. Why not?

3 A. Same. It was understood, everyone knew.

4 MR. SCHMIDT: Again, objection.

5 THE COURT: Same ruling.

6 Q. Did there come a time when Mr. Owimrin came back to work  
7 for you?

8 A. Yes, ma'am.

9 Q. Approximately when was that?

10 A. It would have been shortly after he sent these lead lists  
11 to us, so spring of '16.

12 Q. Let's take a look at Government Exhibits 260 and 261. If  
13 you could take a look in your binder.

14 A. AUSA, how far through the binder roughly would that be?

15 Q. Almost towards the back.

16 A. OK.

17 THE COURT: Ms. Fletcher, since we are going to be  
18 taking lunch today around 12:30, this may be a time to give the  
19 jury its mid-morning break. I don't want to interrupt anything  
20 you're in the midst of.

21 MS. FLETCHER: This is a fine time to stop, your  
22 Honor.

23 THE COURT: Ladies and gentlemen, 15 minutes. Refresh  
24 yourselves.

25 (Jury exits courtroom)



IAP8KET2

Sinclair - Direct

1 THE COURT: You may step down, sir.

2 15 minutes.

3 (Recess)

4 (Continued on next page)

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IAPJKET3

Sinclair - direct

1 (In open court; jury not present)

2 THE COURT: Bring the jury in.

3 (Jury present)

4 THE COURT: Please be seated in the courtroom. You  
5 may continue and conclude.

6 MS. FLETCHER: Your Honor, just before the break, I  
7 had offered Government Exhibits 260 and 261.

8 THE COURT: Counsel?

9 MR. PAUL: I have no objection.

10 THE COURT: Mr. Schmidt?

11 MR. SCHMIDT: No objection.

12 THE COURT: Admitted.

13 (Government's Exhibits 260 and 261 received in  
14 evidence)

15 MS. FLETCHER: Can we pull up 260, please, Ms. Lee.  
16 If we can blow up just the first paragraph and the heading,  
17 please.

18 BY MS. FLETCHER:

19 Q. Mr. Sinclair, do you see that?

20 A. Yes, ma'am.

21 Q. What are you looking at?

22 A. The point center script for the debt elimination profile.

23 Q. Who would read this script?

24 A. The sales reps or the appointment centers.

25 Q. At the time when you first started selling this debt

IAPJKET3

Sinclair - direct

1 elimination service, did you have separate appointment centers  
2 and salespeople?

3 A. Yes, ma'am.

4 Q. Was this a script that the appointment center would read or  
5 the salesperson would read?

6 A. Both people because it was set up differently.

7 Q. Do you see, looking at this exhibit, the beginning portion  
8 with the bracket with the client's name?

9 A. Yes.

10 Q. The rep's name?

11 A. Yes.

12 Q. How would that opening go?

13 A. You want me to just --

14 Q. Yes.

15 A. -- to do like I was on a call?

16 Q. Yes. Did you do these calls yourself for some period of  
17 time?

18 A. For the first week, to test the viability of it.

19 Hello. Mrs. Smith, my name is Bill, and I am calling  
20 from Consumer Shield and the Consumer Protection Department.

21 Q. Please continue.

22 A. The reason for the call today is my company works  
23 specifically with individuals who may have been solicited to  
24 invest into one or more of those work from home programs such  
25 as a website selling products, merchant services which are

IAPJKET3

Sinclair - direct

1 credit card swiping machines or government grants. Our records  
2 indicate you may have done this in the past. Is that correct?

3 And in most cases, the consumer ends up in substantial  
4 credit card debt because of this, but this happened to you as  
5 well? I am very sorry to hear that, but the good news is our  
6 company now has a program that offers CPA advisory services in  
7 efforts to strategically default on your debt to make it  
8 uncollectible by creditors and the bank. All we need to do is  
9 set up a call to an analyst to properly assess your situation  
10 and determine if you qualify for the program.

11 Q. Who were some of the analysts who worked for you selling  
12 this debt elimination service?

13 A. Aside from myself and Michael Finocchiaro, the sales reps  
14 were Derrick Larkin, Brian Pascalini, Elvin Corlion, Corey  
15 Thomas, his wife for a time, Philip Howard. Andrew Owimrin had  
16 come back. I believe Luis Jiminez for a time and Steve  
17 Aladenoye.

18 Q. How long did Mr. Owimrin work for you selling the debt  
19 elimination services?

20 A. In-between a month and two months.

21 Q. Why did he leave?

22 A. He wasn't productive with it.

23 Q. I am showing you what has been marked for identification as  
24 Government Exhibit 256. Approximately how much did you charge  
25 customers for this debt elimination service?

IAPJKET3

Sinclair - direct

1 A. So it was a percentage, but it was capped.

2 Q. Capped at what?

3 A. At \$10,000.00.

4 THE COURT: The what?

5 THE WITNESS: Their debt, overall debt.

6 BY MS. FLETCHER:

7 Q. Do you recognize Government Exhibit 256?

8 A. Yes, ma'am.

9 Q. How do you recognize it?

10 A. This was a list that we had created to make sure that these  
11 companies were not charged back on.

12 MS. FLETCHER: The government offers Government  
13 Exhibit 256.

14 MR. PAUL: No objection.

15 MR. SCHMIDT: No objection.

16 THE COURT: Admitted.

17 (Government's Exhibit 256 received in evidence)

18 MS. FLETCHER: Please publish.

19 BY MS. FLETCHER:

20 Q. Mr. Sinclair, when you say to ensure that these companies  
21 were not charged back on, what, if anything, were your  
22 salespeople instructed to do with respect to charge-backs for  
23 the debt elimination service?

24 A. If needed, a lot of these customers were maxed out because  
25 they had spent so much money, so there were situations where

IAPJKET3

Sinclair - direct

1     them initiating charge-backs with some other companies that are  
2     not listed here was permitted.

3     Q.   Was it encouraged?

4     A.   Yes.

5     Q.   Why was it encouraged?

6     A.   So we can make money.

7     Q.   So they could pay for the debt elimination service?

8             MR. SCHMIDT:  Objection, your Honor.

9             THE COURT:  Sustained as to form.

10    BY MS. FLETCHER:

11    Q.   Why was it encouraged?

12    A.   So they could pay for the debt elimination service.

13    Q.   Were there rules in place with respect to which companies  
14    could and could not be charged back on?

15    A.   Yes, ma'am.

16    Q.   Is that what we're looking at here?

17    A.   We are.

18    Q.   What are the entities that are listed on this sheet,  
19    generally speaking, without reading each one.

20    A.   These are companies we had gotten leads from or entities  
21    that we operated as, which is essentially us.

22    Q.   Why didn't you want customers to charge back on those  
23    entities?

24    A.   Because we wouldn't charge back on our own sales because  
25    that would cost us thousands of dollars, and we didn't want

IAPJKET3

Sinclair - direct

1 people who were giving us leads, we didn't want anyone to  
2 charge back there because we wouldn't get their leads any more.

3 Q. I want to focus your attention on conversations you had  
4 with Andrew Owimrin after he came back to work for you during  
5 the debt elimination service.

6 Did there ever come a time when you and Mr. Owimrin  
7 discussed any customers that he had sold while he was away  
8 working for Arash?

9 A. Yes.

10 Q. What did Andrew Owimrin say to you about those customers?

11 A. One specifically that they sold for \$150,000, who  
12 apparently they had promised a percentage of a revenue sharing  
13 with, like a profit sharing, rather, with A1 Business  
14 Consultants. As a part of that, \$150,000.

15 Q. You say they promised.

16 Who did Andrew tell you had promised this woman this  
17 profit sharing?

18 A. Andrew and Arash.

19 Q. What, if any, questions did you ask Mr. Owimrin about that  
20 arrangement?

21 A. Say you're going to get in trouble. First I asked him are  
22 you giving her that profit sharing? The answer was no.

23 Q. What, if anything else, did he say?

24 A. Then I asked aren't you nervous? Aren't you going to get  
25 in trouble, and his response was no, with like a giggle/laugh

IAPJKET3

Sinclair - direct

1 and said that she loves him, she loves me.

2 Q. During that conversation, did you and Mr. Owimrin discuss  
3 how much, if anything, he was paid from that \$150,000 sale?

4 A. He said a percentage of it.

5 Q. What percentage did he say?

6 A. I can't say with absolute certainty.

7 Q. Did he express to you any satisfaction or dissatisfaction  
8 with the percentage that he received?

9 A. Dissatisfaction.

10 Q. What did he say?

11 A. He had hoped for a 50-50 split with Arash.

12 Q. Did you understand him to say he got less than that?

13 A. Yes, ma'am.

14 Q. What, if anything, did Mr. Owimrin propose to you that you  
15 do with respect to this customer?

16 A. Sell the debt.

17 Q. What did you say in response to that suggestion?

18 A. I wanted no part of it.

19 Q. Why did you want no part of it?

20 A. There was just red flags all over this \$150,000 sale. I  
21 just didn't want to be attached to it in any way.

22 Q. What were the red flags?

23 A. That she was promised things that absolutely were not going  
24 to be delivered on. There is a line in the sand, and I think  
25 that with varying degrees based on who you talk to in this



IAPJKET3

Sinclair - direct

1 industry, I was on the other side of that line.

2 Q. What do you mean by that?

3 A. There were certain levels of fraud in this industry, and  
4 that, to me, was just too much. I did not want to be involved  
5 with that woman on any level.

6 Q. Why?

7 A. Legal repercussions, attorneys, you name it.

8 Q. What, if any, concerns did you have about getting caught?

9 A. How it pertains to that particular woman?

10 Q. Yes.

11 A. I felt like at some point they were going to get in trouble  
12 for that, and by "they," I mean Andrew and Arash.

13 Q. Did you ever communicate with that particular woman?

14 A. No.

15 Q. Mr. Sinclair, I want to ask you now some questions about  
16 your testimony early yesterday about your cooperation with the  
17 government.

18 A. Yes, ma'am.

19 Q. Did there come a time after your March 2017 arrest when you  
20 began meeting with the government?

21 A. Yes, ma'am.

22 Q. Approximately how long after your arrest was that?

23 A. Within weeks.

24 Q. Can you remind the jury when you were arrested?

25 A. March 21st, 2017.

IAPJKET3

Sinclair - direct

1 Q. Do you recall how many meetings you had with the government  
2 since you began meeting with them?

3 A. Dozens.

4 Q. Who was present for the meetings that you had with the  
5 government in the beginning?

6 A. My attorney, Lisa Scolari, yourself, AUSA Fletcher,  
7 Detective Bastos, special Agent Figarello. In the beginning, I  
8 think that was generally the people there.

9 Q. Focusing on the beginning -- actually, focusing on your  
10 meetings with the government over time, what in general  
11 happened during those meetings?

12 MR. SCHMIDT: Objection, your Honor.

13 THE COURT: Rephrase it.

14 BY MS. FLETCHER:

15 Q. During the meetings you had with the government, what did  
16 you do during those meetings?

17 THE COURT: What was the purpose of those meetings,  
18 from your standpoint?

19 THE WITNESS: I was asked a lot of questions mainly  
20 about myself and my business, your Honor.

21 BY MS. FLETCHER:

22 Q. Did you answer those questions?

23 A. Yes, ma'am.

24 Q. Were you asked any other types of questions?

25 A. I was asked about other people, other business dealings.

IAPJKET3

Sinclair - direct

1 Are we focusing on the beginning or just overall?

2 Q. Overall?

3 A. I was asked if I committed any other crimes during my  
4 lifetime.

5 MR. SCHMIDT: Objection, your Honor; hearsay.

6 THE COURT: I'll allow that. Go ahead.

7 BY MS. FLETCHER:

8 Q. You may continue, Mr. Sinclair.

9 A. I was asked if I had committed any other crimes. A lot of  
10 it was about me, most of it.

11 Q. Did you answer those questions to the best of your ability?

12 A. Yes, ma'am.

13 Q. Did anyone make you -- focusing specifically on the  
14 crimes -- did anyone make you any promises that you would not  
15 be charged for crimes that you told the government about?

16 A. No, ma'am.

17 MR. SCHMIDT: Objection, your Honor.

18 THE COURT: Yes, that is quite leading. Sustained.

19 BY MS. FLETCHER:

20 Q. What, if any, promises were made to you with respect to  
21 whether you would be charged for the crimes that you told the  
22 government about?

23 A. No promises were made.

24 Q. Apart from your participation in this telemarketing scheme  
25 that you testified about, what other crimes did you tell the

IAPJKET3

Sinclair - direct

1 government about?

2 MR. SCHMIDT: Objection.

3 MR. PAUL: Objection.

4 MR. SCHMIDT: May we approach?

5 THE COURT: Yes, quickly.

6 (Continued on next page)

IAPJKET3

Sinclair - direct

1 (At sidebar)

2 MR. SCHMIDT: She is asking questions about what  
3 statements he made back then in these meetings as opposed to  
4 just asking him whether or not he committed these crimes. She  
5 is going through statements --

6 THE COURT: You are going to be doing the same thing,  
7 aren't you?

8 MR. SCHMIDT: Judge, I deal with, you know,  
9 cooperation differently than maybe some other people, but  
10 having her bring out when and what he told her back then is not  
11 proper. That is all hearsay. He can testify now.

12 If I cross-examine him in a way that allows them to  
13 bring out prior consistent statements, then I opened the door.  
14 I don't plan to do that. What they're doing is basically  
15 bringing out prior inconsistent statements.

16 THE COURT: They're trying to draw the sting from your  
17 cross-examination --

18 MR. SCHMIDT: No.

19 THE COURT: -- one of us at a time.

20 MR. SCHMIDT: But to do that, they ask him what crimes  
21 you've committed, not did you tell us about it. That is  
22 different.

23 THE COURT: I will allow them to ask what crimes that  
24 you committed and told the government about, that is all right.  
25 I have no problem with that.

IAPJKET3

Sinclair - direct

1 MR. SCHMIDT: I think what crimes he has committed,  
2 right, and if I go into did you tell the government about it,  
3 she can go into it, basically what crimes he committed, not  
4 what he told the government in the past meetings, which is the  
5 definition of hearsay.

6 MS. FLETCHER: I am happy to ask him what crimes he  
7 committed.

8 THE COURT: Let's move forward.

9 (Continued on next page)

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IAPJKET3

Sinclair - direct

1 (In open court)

2 BY MS. FLETCHER:

3 Q. Mr. Sinclair, what other crimes have you committed in your  
4 life?

5 A. Various drug use since high school. I sold marijuana in  
6 college. I have driven while intoxicated. I have paid for  
7 escorts. My involvement with --

8 THE COURT: Is that prostitutes?

9 THE WITNESS: Yes, sir.

10 THE COURT: Go ahead.

11 THE WITNESS: My involvement with this industry. I  
12 believe that's it.

13 BY MS. FLETCHER:

14 Q. How about personal drug use?

15 A. Do you want me to list them out?

16 Q. What drugs did you use?

17 A. I smoked marijuana, LSD, mushrooms, cocaine, special K,  
18 ecstasy, and Oxycontin.

19 Q. Did you have a problem with any one of those drugs during  
20 the time that you were operating Olive Branch Marketing?

21 MR. PAUL: Objection to the form.

22 THE COURT: Sustained as to form.

23 BY MS. FLETCHER:

24 Q. What, if any, of the drugs you took were you addicted to?

25 A. Oxycontin.

IAPJKET3

Sinclair - direct

1 Q. Approximately how many Oxycontin pills did you take at the  
2 height of your addiction?

3 A. Roughly 40 a day.

4 THE COURT: 40 Oxycontin pills of what strength?

5 THE WITNESS: 30 milligrams, your Honor.

6 THE COURT: 40 Oxycontin of 30 milligrams each?

7 THE WITNESS: Yes, your Honor.

8 BY MS. FLETCHER:

9 Q. What is the approximate cost of 40 30 milligram Oxycontin  
10 pills a day?

11 A. Each one at \$25.00, at a thousand a day.

12 Q. A thousand dollars a day?

13 A. Yes, ma'am.

14 Q. Have you used drugs since your arrest in March of 2017?

15 A. No, ma'am.

16 Q. Have you taken any other substances related to your  
17 addiction?

18 A. Suboxone.

19 Q. What is suboxone?

20 A. It is a drug that is prescribed to help you come off of  
21 opiate addiction, to prevent withdrawal symptoms.

22 Q. Did you use Oxycontin in your office at Olive Branch  
23 Marketing?

24 A. Yes, ma'am.

25 Q. Did you discuss your oxy use with other members of the



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Sinclair - direct

1 sales floor?

2 A. Just Michael Finocchiaro.

3 Q. Why did you not discuss it with the salespeople who worked  
4 for you?

5 A. Am sorry. Correction. I also discussed it with Arash  
6 Ketabchi. I was embarrassed. I am still. I did not want  
7 people to know that.

8 Q. Did you ever sell oxycodone to people who worked for you?

9 A. No, ma'am.

10 Q. Did you ever share your pills with people who worked for  
11 you?

12 A. With Michael Finocchiaro.

13 Q. Did he reciprocate?

14 A. Yes, ma'am.

15 Q. In connection with cooperating with the government, did you  
16 enter a guilty plea and admit to committing federal crimes?

17 A. Yes, ma'am.

18 Q. Which crimes did you admit to committing?

19 A. Conspiracy to commit money laundering, conspiracy to commit  
20 wire fraud and wire fraud.

21 Q. Have you been sentenced yet?

22 A. No, ma'am.

23 Q. The other crimes that you've committed that you discussed,  
24 did the government ask you to plead guilty to those crimes?

25 MR. SCHMIDT: Objection.

IAPJKET3

Sinclair - direct

1 THE COURT: Just a moment. Sustained.

2 BY MS. FLETCHER:

3 Q. The other crimes that you discussed, prostitution, drug  
4 use, what is your understanding of whether the judge who  
5 sentences you will know about those crimes?

6 MR. SCHMIDT: Objection.

7 THE COURT: I'll allow that if he has an  
8 understanding.

9 THE WITNESS: Yes, your Honor will know about that.

10 BY MS. FLETCHER:

11 Q. Do you know whether or not the Judge can take those crimes  
12 into account when he sentences you?

13 MR. SCHMIDT: Objection.

14 THE COURT: I will allow that. It is his  
15 understanding.

16 A. It is my understanding that he can and will.

17 BY MS. FLETCHER:

18 Q. What is your understanding of the maximum sentence that you  
19 face?

20 A. 60 years.

21 Q. By "60 years," what do you mean?

22 A. 60 years in federal prison.

23 Q. What is the lowest sentence that you could get?

24 A. Whatever the judge decides.

25 Q. Including no jail time?

IAPJKET3

Sinclair - direct

1 A. Yes, ma'am.

2 Q. Is that the sentence you hope to get?

3 A. Absolutely.

4 Q. When you pled guilty, did you sign an agreement to  
5 cooperate with the government?

6 A. Yes, ma'am.

7 Q. What is your understanding of what your responsibilities  
8 are pursuant to that cooperation agreement?

9 A. Above all else, be truthful, be honest at all times. I am  
10 basically at your disposal when you need to talk to me, when  
11 you need me to come in and meet, I need to comply and just be  
12 truthful.

13 Q. What, if any, obligations do you have with respect to  
14 committing additional crimes?

15 A. I cannot.

16 Q. What, if any, obligations do you have with respect to  
17 testifying in a trial if the government asks you to?

18 A. I need to.

19 Q. What is your understanding of when your cooperation is  
20 complete?

21 A. Upon my sentencing.

22 Q. Who decides when your sentencing takes place?

23 A. The Southern District of New York.

24 Q. What do you mean by that?

25 A. You.

IAPJKET3

Sinclair - direct

1 Q. Is your testimony here part of your cooperation?

2 A. Yes, ma'am.

3 Q. Could you be asked to testify in additional cases?

4 A. Yes, ma'am.

5 Q. If you meet your responsibilities under the cooperation  
6 agreement, what is your understanding of what the government  
7 will do for you?

8 A. Provide Judge Stein with the 5K letter on my behalf.

9 Q. What is your understanding of what will be in the 5K  
10 letter?

11 A. Everything that I've done that is considered bad and  
12 everything that I've given you that you deem helpful.

13 Q. When you say everything you've done that is considered bad,  
14 what do you mean by that?

15 A. Previous crimes we had just discussed.

16 THE COURT: You referred to something as a 5K letter.  
17 Do you know what that means? What is your  
18 understanding of what 5K comes from or means?

19 THE WITNESS: It is a legal -- I don't know how to  
20 explain it, but there is a 5K1.1, I believe, maybe I'm wrong, I  
21 guess it is an article of something.

22 BY MS. FLETCHER:

23 Q. Who is that letter sent to?

24 A. Your Honor, Judge Stein.

25 Q. What is your understanding of what that letter allows the

IAPJKET3

Sinclair - direct

1 Judge to do?

2 A. Get a full picture of me.

3 Q. For what purpose?

4 A. To make --

5 MR. SCHMIDT: Objection, your Honor.

6 THE COURT: I will allow that, whatever his  
7 understanding is.

8 Q. -- to make a fair decision on what my punishment will be.

9 BY MS. FLETCHER:

10 Q. What do you hope the Judge does when he sees your 5K  
11 letter?

12 A. I am hoping for no prison time, first and foremost.

13 Q. Has the government promised you you won't go to prison?

14 A. No, ma'am.

15 Q. Has anyone promised you that your sentence will be reduced  
16 in any way?

17 A. No, ma'am.

18 Q. What is your understanding of who decides what your  
19 sentence will be?

20 A. Strictly Judge Stein.

21 Q. Do you have an understanding as to whether the government  
22 will make a particular sentencing recommendation to Judge Stein  
23 on your behalf?

24 A. No. I know that you cannot.

25 Q. Let me ask the question again.

IAPJKET3

Sinclair - direct

1 Do you have an understanding as to whether the  
2 government will make a particular sentencing recommendation on  
3 your behalf?

4 A. Yes.

5 Q. What is that understanding?

6 A. That you cannot.

7 Q. If the government writes the 5K letter for you, and the  
8 defendants on trial are acquitted, what do you expect to  
9 happen?

10 MR. SCHMIDT: Objection, your Honor. Now we are going  
11 into speculation.

12 MS. FLETCHER: I will ask a different question your  
13 Honor. It was confusing anyway.

14 THE COURT: Yes.

15 BY MS. FLETCHER:

16 Q. If you get a 5K letter, even if you get the 5K letter, what  
17 is your understanding of the maximum sentence the Judge can  
18 impose on you?

19 A. 60 years in prison.

20 Q. If you lie during your testimony in this trial or in any of  
21 the meetings with the government, and these defendants are  
22 convicted, will you get a 5K letter?

23 A. No, ma'am.

24 Q. If you tell the truth at this trial, and these defendants  
25 are acquitted, will you get a 5K letter?

IAPJKET3

Sinclair - direct

1 A. You said I tell the truth?

2 Q. Yes.

3 A. Yes, ma'am.

4 Q. As you understand it, does the outcome of this trial have  
5 any effect on whether you get a 5K letter?

6 A. No, ma'am.

7 MS. FLETCHER: May I have a moment, your Honor?

8 THE COURT: Yes.

9 (Off-the-record discussion)

10 MS. FLETCHER: Your Honor, in an effort to cut time,  
11 not show the witness these documents, the government offers  
12 Government Exhibits 483, 257, 153 and 488 through 501. The  
13 government has discussed these documents with the defense.

14 THE COURT: Is there any objection, gentlemen?

15 MR. SCHMIDT: No, your Honor.

16 MR. PAUL: No.

17 MR. SCHMIDT: May I take a quick glance at them.

18 THE COURT: The government said they were discussed  
19 during the break.

20 (Off-the-record discussion)

21 MR. SCHMIDT: No objection, your Honor.

22 THE COURT: Admitted without objection.

23 (Government's Exhibits 483, 257, 153 and 488 through  
24 501 received in evidence)

25 THE COURT: Proceed.

IAPJKET3

Sinclair - direct

1 BY MS. FLETCHER:

2 Q. Mr. Sinclair, we have spent quite a bit of time today and  
3 yesterday talking about Andrew Owimrin. Do you see Andrew  
4 Owimrin in the courtroom today?

5 A. Yes, ma'am.

6 Q. Would you describe him by an article of clothing he is  
7 wearing.

8 A. A light blue sweater.

9 MS. FLETCHER: May the record reflect the witness has  
10 identified Andrew Owimrin.

11 THE COURT: He has and it does.

12 BY MS. FLETCHER:

13 Q. Mr. Sinclair, do you see Mr. Steve Ketabchi in the  
14 courtroom today?

15 A. I do.

16 Q. You can stand up if you need to, sir.

17 A. Yes, I can see him.

18 Q. Can you identify him by an article of clothing he is  
19 wearing.

20 A. A black jacket.

21 THE COURT: Is he in the second row?

22 THE WITNESS: He is.

23 THE COURT: Is he at the far, as you look at the  
24 second row, in the far right?

25 THE WITNESS: Yes, sir.



IAPJKET3

Sinclair - cross

1 THE COURT: Mr. Sinclair has identified Steve  
2 Ketabchi.

3 MS. FLETCHER: No further questions, your Honor.

4 THE COURT: Cross-examination, Mr. Schmidt.

5 CROSS EXAMINATION

6 BY MR. SCHMIDT:

7 Q. Mr. Sinclair --

8 A. Yes, sir.

9 Q. -- you kept a calendar or calendars in your business  
10 relating to appointments. Is that right?

11 A. Yes, sir.

12 Q. And that was kept in the office, right?

13 A. Yes, sir.

14 Q. You had access to it, right?

15 A. Yes, sir.

16 Q. Now, did a person named Lisa work for you?

17 A. Lisa?

18 Q. Yes.

19 A. That was the name she used on the phone.

20 Q. Was she doing debt consolidation?

21 A. Yes, sir.

22 Q. The appointments that they received, they would come out of  
23 the main appointment calendar, right?

24 MS. FLETCHER: Objection to form.

25 MR. SCHMIDT: Withdrawn.

IAPJKET3

Sinclair - cross

1 BY MR. SCHMIDT:

2 Q. Would the main appointment calendar reflect appointments  
3 for the sales reps to speak to as long as it wasn't deleted at  
4 some later date?

5 A. Yes, sir.

6 Q. In fact, didn't the person who used the phone name Lisa  
7 contact Jane Thompson to sell her debt relief?

8 A. I cannot say with certainty if she called a specific name.  
9 I don't remember.

10 Q. Do you know who Jane Thompson is?

11 A. Off the top of my head, no.

12 Q. Do you know the name Jane, don't you?

13 A. Do I name the name Jane?

14 Q. You used the name Jane here before, didn't you?

15 MS. FLETCHER: Objection.

16 THE COURT: Maybe he did. I don't know.

17 BY MR. SCHMIDT:

18 Q. Did you find out the name of the person that you say  
19 Mr. Owimrin sold \$150,000 as in the percentage of the A1  
20 Business?

21 A. He never gave me the name, so I didn't know her by name.

22 (Off-the-record discussion)

23 BY MR. SCHMIDT:

24 Q. So if you didn't know her name, how would you know whether  
25 or not you sold her or tried to sell her?

IAPJKET3

Sinclair - cross

1 A. We may have. We didn't based on our conversation with  
2 Andrew.

3 THE COURT: When you said "you," you mean.

4 Mr. Sinclair, or do you mean Olive Branch or some  
5 other entity?

6 BY MR. SCHMIDT:

7 Q. Whatever entities that you controlled? Let me rephrase the  
8 question.

9 You told us that you didn't want to go near this  
10 person because there were red flags and you were going to get  
11 into trouble, right?

12 A. Correct.

13 Q. And you're telling us now that you didn't even know who  
14 this person was?

15 A. Andrew did not give me a name, correct.

16 Q. So you're saying that you were loathe to stay away from  
17 this person, but you didn't know what the name of the person  
18 that you were supposed to stay away from. Is that right?

19 A. Correct.

20 Q. Now, I am going to show you what has been marked as Defense  
21 Exhibit CAL-34.

22 MR. SCHMIDT: May I approach the witness?

23 THE COURT: Yes.

24 (Pause)

25 BY MR. SCHMIDT:

IAPJKET3

Sinclair - cross

1 Q. Could you tell us what that is.

2 A. This is an appointment.

3 Q. Do you see the name at the bottom left --

4 MS. FLETCHER: Objection.

5 Q. -- of whose calendar it is?

6 MR. SCHMIDT: I am not saying what it is yet.

7 THE COURT: Yes, do you see it, yes or no?

8 THE WITNESS: Yes.

9 THE COURT: Do you see a name at the bottom, yes or  
10 no?

11 THE WITNESS: Yes, sir.

12 MR. SCHMIDT: I offer that into evidence, your Honor.

13 MS. FLETCHER: Your Honor, may I have a moment. We  
14 have a stack of these documents. I don't see that in it.

15 THE COURT: Mr. Schmidt, do you have another copy?

16 MR. SCHMIDT: Do we have another copy?

17 (Off-the-record discussion)

18 THE COURT: The government has it.

19 MS. FLETCHER: No objection, your Honor.

20 THE COURT: Admitted.

21 (Defendant's Exhibit CAL-34 received in evidence)

22 MR. SCHMIDT: Can we display that to the jury, please?

23 THE COURT: Next question, sir.

24 BY MR. SCHMIDT:

25 Q. What is the name of the client?

IAPJKET3

Sinclair - cross

1 A. On this paper?

2 Q. Yes.

3 A. Jane Thompson.

4 Q. Can you read from the paper?

5 And who is the person calling Jane Thompson, who the  
6 appointment was made for?

7 A. It looks like Lisa Corro.

8 Q. Do you know Lisa Corro's real name?

9 A. Elvin Corlion.

10 Q. Now, did Mr. Owimrin tell you how the \$150,000 was paid?

11 A. Yes.

12 Q. She put it on a credit card. Is that correct?

13 A. Correct.

14 Q. But he did tell you that she had other dealings with other  
15 companies that used her credit card. Is that right?

16 A. He may have.

17 Q. Now, who owns A1 Business Consulting?

18 A. Arash Ketabchi.

19 Q. Does anybody else own it?

20 A. Not to my knowledge.

21 Q. Who has the right to sell a portion of the A1 Business  
22 Consulting?

23 MS. FLETCHER: Objection.

24 THE COURT: If you know?

25 THE WITNESS: Yeah, according to my knowledge, Arash

IAPJKET3

Sinclair - cross

1 Ketabchi.

2 BY MR. SCHMIDT:

3 Q. To your knowledge, in January or February 2006, was A1  
4 Business Consulting in business?

5 A. Not to my knowledge, no.

6 Q. So you believe it was no longer functioning, A1 Business,  
7 in January of 2016. Is that your testimony?

8 A. You said 2006.

9 Q. I apologize if I said that.

10 In 2016, in January and February, was A1 Business  
11 Consulting in business?

12 A. It may have been. Arash was not working on my floor, so I  
13 don't know.

14 Q. You didn't have conversations with Arash at that time?

15 A. In January of '16?

16 Q. Did you have conversations with Mr. Owimrin at that time?

17 A. Andrew?

18 Q. Yes.

19 A. In January of '16, I don't know specifically if we did.

20 Q. When was the first time that you had a conversation in 2016  
21 in any form with Andrew?

22 A. I don't have specific dates when we spoke.

23 Q. How about approximately?

24 A. The springtime, I would say, of 2016.

25 Q. Now, the springtime ranges from March 21st to June 21st?

IAPJKET3

Sinclair - cross

1 A. Correct.

2 Q. Could you give us, if possible, anything closer than just  
3 springtime?

4 A. Not with certainty, no, sir.

5 Q. What was the first thing that you had a conversation about  
6 with Mr. Owimrin?

7 A. Lead lists he was going to be able to give us and him  
8 possibly wanting to come back to sell debt for us.

9 Q. So --

10 A. Debt elimination services, to be clear.

11 Q. -- so the first time that you had a real conversation with  
12 Mr. Owimrin -- withdrawn. Was it on the telephone or in  
13 person?

14 A. With me, I believe it was in person.

15 Q. Where?

16 A. At my office.

17 Q. So Andrew came to speak with you and indicated that he  
18 was --

19 MS. FLETCHER: Objection.

20 THE COURT: Yes, yes.

21 BY MR. SCHMIDT:

22 Q. So you had a conversation, as you testified, with  
23 Mr. Owimrin about coming to work for you. Is that right?

24 A. Yes, sir.

25 Q. Part of that conversation included lead lists. Is that

IAPJKET3

Sinclair - cross

1 right?

2 A. Yes.

3 Q. Was it your idea for him to provide you with Arash  
4 Ketabchi's lead lists?

5 A. No.

6 Q. Weren't you having problems at that point in having lead  
7 lists?

8 A. Yes, sir.

9 Q. So notwithstanding Mr. Owimrin wanted to come back to work  
10 for you, and that you were having trouble obtaining lead lists,  
11 you just thought it was inappropriate to ask to get somebody  
12 else's lead lists. Is that right?

13 MS. FLETCHER: Objection.

14 THE COURT: It is cross.

15 A. No, I am sorry, I didn't say that.

16 BY MR. SCHMIDT:

17 Q. Now, you said to us, you testified here that you never  
18 spoke with Andrew about the fact that the grant sales were  
19 completely bogus. Is that right?

20 A. To my recollection, yes.

21 Q. You said, though, that everybody knew that it was, right?

22 A. Yes, sir.

23 Q. I think there were a couple of other things you testified  
24 to that you didn't tell Mr. Owimrin, but everybody knew, right?

25 A. Yes, sir.



IAPJKET3

Sinclair - cross

1 Q. Now, you gave us before -- excuse me.

2 When you testified earlier, you told us about the Tier  
3 I salespeople?

4 A. Yes, sir.

5 Q. One was Arash Ketabchi, right?

6 A. Yes.

7 Q. Had he worked in the industry before he ended up being your  
8 sales manager?

9 A. Yes.

10 Q. Do you know how long he worked in the industry before that?

11 A. To my knowledge, since -- yes, 2008, maybe.

12 Q. Now, another person was Chris Wilson, right?

13 Did Chris Wilson work in the industry before he came  
14 to you?

15 A. I don't know offhand if Chris did.

16 THE COURT: Mr. Schmidt asked about somebody who  
17 worked in the industry. What is your understanding of the  
18 industry?

19 THE WITNESS: The Tax Club or another sales force  
20 selling similar products.

21 BY MR. SCHMIDT:

22 Q. Now, did Pete DiQuarto work in the industry before that?

23 A. I'm not certain.

24 Q. Do you know what Pete did before he came to you?

25 A. I know he was in prison.

IAPJKET3

Sinclair - cross

1 Q. Do you know for what?

2 A. Selling drugs.

3 Q. Do you know what Chris Wilson did before?

4 A. No.

5 Q. Did you have any input in whether he was being hired or  
6 not?

7 A. Yes, I did.

8 Q. You would have interviewed him or would have been part of  
9 the group that interviewed him?

10 A. Yes.

11 Q. Did you ask him what he was doing before?

12 MS. FLETCHER: Objection to form.

13 THE COURT: Change the form.

14 MR. SCHMIDT: Withdrawn.

15 BY MR. SCHMIDT:

16 Q. Did you ask him what he was doing or have a resume of what  
17 he was doing?

18 A. Not necessarily.

19 Q. What was Steve's last name?

20 A. Aladenoye.

21 Q. Aladenoye? Do you know where he worked before coming to  
22 you?

23 A. Yes.

24 Q. Where was that?

25 A. He worked at the Tax Club.

IAPJKET3

Sinclair - cross

1 Q. These were the people that you said were the Tier I people.  
2 Is that right?

3 A. Yes, sir.

4 Q. Then there was Andrew and Reagan and I think Luis?

5 A. Luis, yes.

6 Q. Were the ones below them, right?

7 A. Right.

8 THE COURT: Speak a little loudly, please.

9 THE WITNESS: Yes, sir, your Honor.

10 BY MR. SCHMIDT:

11 Q. The Tier I group was the more savvy group, wasn't it?

12 A. Yes, sir.

13 Q. Now, you had lots of other people that came to work for  
14 you, right?

15 A. Yes, sir.

16 Q. Did anybody come to work for you that you did not approve?

17 A. As far as sales reps are concerned?

18 Q. Yes, sales reps?

19 A. There were a few, I'm sure, over the years so, yes.

20 Q. Do you remember any of the people's names?

21 A. I don't.

22 Q. Did you hire or did you participate in hiring Ray Anilos?

23 A. Yes.

24 Q. Did you fire Ray Anilos?

25 A. Technically, no. He just disappeared.

IAPJKET3

Sinclair - cross

1 Q. Do you know where he worked before?

2 A. Yes.

3 Q. Where was that?

4 A. For Carl Morris.

5 Q. Did you hire Carl Morris?

6 A. No.

7 Q. Did he work in the sales floor?

8 A. I didn't technically hire Carl Morris. He was a sales rep  
9 on my floor.

10 Q. The answer is no?

11 A. Yes, right.

12 Q. What about Richard Frost?

13 A. No, he was not an employee of mine.

14 Q. Now, you testified that the script that was admitted into  
15 evidence, the one that said Tax Club on it --

16 A. Yes, sir.

17 Q. Do you know that one?

18 A. Yes, sir.

19 Q. You said that you modified it, right?

20 A. Yes, sir.

21 Q. You modified it, but you left the word "Tax Club" in it.  
22 Is that your testimony?

23 A. That's what it still said, yes.

24 Q. In what way did you modify it?

25 A. The content.

IAPJKET3

Sinclair - cross

1 Q. What did you do about the content?

2 A. I don't have the original script here to make a  
3 side-by-side comparison to tell you exactly what I took out.

4 In my opinion, the changes I made made it flow better,  
5 it made it more substantive and it created more value with our  
6 audience.

7 Q. Does that mean you thought it was a better way to explain  
8 how to sell those things?

9 A. Yes, sir.

10 Q. Did you, in preparing and modifying these scripts, did you  
11 make sure that there was nothing in the scripts that would  
12 cause problems with the federal authorities?

13 Is that correct?

14 A. To my knowledge --

15 Q. I am asking you to do it, if you did it.

16 So it would be to your knowledge and nobody else's,  
17 yes?

18 A. Okay, yes, the answer is yes.

19 Q. You repeatedly told your salespeople you can't make earning  
20 promises, right?

21 A. Yes, sir.

22 Q. Were people fired for making earning promises?

23 A. Yes.

24 Q. Who was fired?

25 A. Michael Pizarro.

IAPJKET3

Sinclair - cross

1 Q. Were people actually fined, for doing that.

2 A. Yes.

3 Q. Who were the people fined for doing that?

4 A. I don't know specifically.

5 Q. Was Chris Wilson one of them?

6 A. Again I don't know specifically.

7 Q. Who were the most aggressive salespeople on the floor  
8 during that 2014 and '15 period?

9 A. Chris Wilson, Arash Ketabchi, Steve Aladenoye, and Pete  
10 DiQuarto, I would say.

11 Q. Were they the four top sellers?

12 A. Yes, sir.

13 Q. Who was the least aggressive out of all of them?

14 A. Reagan Owimrin.

15 Q. Was he the least productive member?

16 A. He was.

17 Q. And Andrew was just above Reagan?

18 A. Yes. .

19 Q. Now, when you set out on your own company, you started  
20 alone -- withdrawn.

21 You ended up being a partner with Michael Finocchiaro,  
22 right?

23 A. Yes, sir.

24 Q. Everybody called him Fino?

25 A. Yes, sir.

IAPJKET3

Sinclair - cross

1 Q. When you started out, Fino wasn't yet your partner. Is  
2 that right?

3 A. That's false.

4 Q. So from the beginning when you went out on your own, you  
5 went with Fino.

6 A. Fino was still employed at the Tax Club, but in agreement,  
7 we were partners.

8 Q. When you started it -- withdrawn.

9 At the Tax Club, did you have any legal problems with  
10 the Tax Club -- withdrawn. Did the Tax Club have any legal  
11 problems when you were there?

12 A. Yes, sir.

13 Q. Was there a settlement with the Federal Trade Commission --

14 MS. FLETCHER: Objection.

15 Q. -- that you were aware of with the Tax Club?

16 THE COURT: Just a moment. Yes, go back a little.  
17 Foundation.

18 BY MR. SCHMIDT:

19 Q. You worked for the Tax Club for many years, right?

20 A. Four years.

21 Q. Now, while you were still there, did you become aware of  
22 litigation with the Federal Trade Commission?

23 A. Yes.

24 Q. Did you become aware of the result of that litigation with  
25 the Federal Trade Commission?

IAPJKET3

Sinclair - cross

1 A. To my knowledge, there was a settlement, like I said.

2 Q. Did you actually have a copy of that settlement in your  
3 computer when you left the Tax Club?

4 A. I may have.

5 Q. Were you aware of the substance generally of the  
6 settlement?

7 A. Generally.

8 Q. So when you started out in your own business with Fino, did  
9 you seek to avoid the same kind of problem that the Tax Club  
10 had with the Federal Trade Commission?

11 A. Can you elaborate what you mean by, "problem."

12 Q. Did you want to not get in trouble with the Federal Trade  
13 Commission?

14 A. Yes, correct.

15 Q. And you saw how the Tax Club got in trouble with the  
16 Federal Trade Commission. Is that correct?

17 A. Yes, sir.

18 Q. So you didn't want to do the same mistakes as the Federal  
19 Trade Commission -- excuse me -- you didn't want to make the  
20 same mistakes as the Tax Club. Is that right?

21 A. Yes, sir.

22 Q. So one of the purposes of modifying the scripts and talking  
23 to the salespeople were to try to avoid those problems. Is  
24 that right?

25 A. If what you mean by "problem" is getting caught, the answer



IAPJKET3

Sinclair - cross

1 is yes.

2 Q. So, in other words, you were fine with everybody committing  
3 all sorts of crimes as long as they didn't get caught. Is that  
4 what you're saying?

5 A. To an extent, yes.

6 Q. What crimes did you permit your salespeople to commit?

7 A. Fraud, the entire thing.

8 Q. So when you started out, it's your testimony that you went  
9 into your business with the intent to commit fraud. Is that  
10 what you're saying?

11 A. That's not a clear yes or no. I'd have to elaborate.

12 Would that be okay?

13 Q. Not yet. We'll give you a chance.

14 Isn't it a fact that you sought to try to run your  
15 business legally?

16 MS. FLETCHER: Objection to "legally."

17 THE COURT: No. I will allow that. Did you try to  
18 run your business in compliance with the laws as you understood  
19 them to be?

20 THE WITNESS: Again I would still have to elaborate,  
21 your Honor. Can I do that?

22 THE COURT: That is up to Mr. Schmidt.

23 BY MR. SCHMIDT:

24 Q. Now, we do know, whether legal or illegal, you didn't want  
25 to get in trouble, right?

IAPJKET3

Sinclair - cross

1 A. Correct.

2 Q. Is it your testimony that the only thing that you wanted to  
3 try to do when you set up your business was not to get into  
4 trouble?

5 A. Correct.

6 Q. Would it be fair to say that during the 2014-15 period,  
7 that most of the people on the sales floor came from the Tax  
8 Club or on some other some other entity?

9 A. Yes, sir.

10 (Continued on next page)

IAP8KET4

Sinclair - Cross

1 Q. So those people you didn't have to train, is that right?

2 A. Correct.

3 Q. Now, when someone who had absolutely no background in this  
4 field -- withdrawn.

5 How many people do you think you hired to come to work  
6 for the firm between 2014 and '15 that had actually no  
7 experience whatsoever in the telemarketing field?

8 A. To the best of my recollection, Reagan Owimrin, Andrew  
9 Owimrin -- you're just again talking about sales reps, right?

10 Q. I am just talking about sales reps.

11 A. I don't know if Chris Wilson did. I can't say with  
12 certainty if he did. I don't know if Pete DiQuarto did either.  
13 I can't say with certainty if he did or did not. I believe the  
14 only two I can say with certainty that did not is Andrew  
15 Owimrin and Reagan Owimrin.

16 Q. So you participated in an interview with him to make a  
17 determination whether or not he was going to be hired, is that  
18 right?

19 A. You mean Andrew?

20 Q. Andrew.

21 A. No.

22 Q. He just came to work?

23 A. To my understanding, Arash said that he's bringing in two  
24 people and that he would train them, and explained who they  
25 were. OK, fine, that's what I said to him.

IAP8KET4

Sinclair - Cross

1 Q. So when you said just a few minutes ago that you couldn't  
2 think offhand of anybody that you didn't actually speak to  
3 before you hired, you were incorrect?

4 A. Can you repeat that, please?

5 Q. Well, you just said that you had nothing to do with Andrew  
6 and Reagan coming and working for your firm, right?

7 MS. FLETCHER: Objection.

8 THE COURT: Sustained.

9 Q. You said Arash said he's bringing in these two people who  
10 are related to his girlfriend, and they came to work, right?

11 A. Correct.

12 Q. So you had nothing to say about it, except for maybe saying  
13 OK to Arash?

14 A. That's how I remember it.

15 Q. So you didn't interview them, you didn't speak to them, you  
16 didn't check them or anything, is that right?

17 A. It wasn't a formal --

18 Q. Did you do anything?

19 MS. FLETCHER: Objection.

20 THE COURT: I will allow it.

21 Did you do anything before they were hired?

22 THE WITNESS: With regard to what specifically, like  
23 background checks?

24 THE COURT: What did you do?

25 THE WITNESS: Nothing to my knowledge.

IAP8KET4

Sinclair - Cross

1 THE COURT: They were a warm body, right? They were  
2 warm bodies?

3 THE WITNESS: Right.

4 THE COURT: They were recommended by Arash?

5 THE WITNESS: Right.

6 THE COURT: Who was your sales manager?

7 THE WITNESS: Yes.

8 THE COURT: You accepted that?

9 THE WITNESS: I did.

10 THE COURT: You didn't do anything else. You didn't  
11 care what they had done before?

12 THE WITNESS: Right.

13 THE COURT: Next.

14 BY MR. SCHMIDT:

15 Q. Didn't you just tell us earlier today that you couldn't  
16 think of anybody that came to work on the sales floor without  
17 you speaking with them and hiring them?

18 MS. FLETCHER: Objection. It misstates the testimony.

19 THE COURT: Let's see.

20 Can you answer that?

21 A. That's not entirely accurate. I didn't say I didn't speak  
22 to them. I am just not involved with the training process.  
23 And it wasn't a formal interview. That's what I was trying to  
24 explain before. It wasn't a formal environment.

25 Q. Now, there has been some testimony about a phone name. Do

IAP8KET4

Sinclair - Cross

1 you remember that?

2 A. Yes.

3 Q. It's absolutely legal for someone to use -- withdrawn.

4 It is your understanding that it's absolutely legal  
5 for somebody to use another name on the telephone?

6 A. Yes.

7 Q. Your understanding was that it was a good idea to have them  
8 to sign something?

9 A. That was my idea at the time, yes.

10 Q. Where did you get that idea from?

11 A. Someone else who he had worked with.

12 Q. Now, you said that you used another name at one point.  
13 That was not at Olive Branch, was it?

14 A. Bill Porzio?

15 Q. Yes.

16 A. No. That was later.

17 Q. At Olive Branch you were known to everybody that you spoke  
18 to as either William or Bill Sinclair?

19 A. Yes, sir.

20 Q. In fact, you were aware that because most of the people  
21 that your salespeople were going to speak to, and your  
22 compliance people were going to speak to, and the appointment  
23 setters were going to speak to were going to be from middle  
24 America, that it was good to have a simple -- to have an  
25 American sounding name that was easy to pronounce, is that

IAP8KET4

Sinclair - Cross

1 right?

2 A. That was the sentiment, yes.

3 Q. That was your understanding of what would be a good idea  
4 business-wise, right?

5 A. Yes.

6 Q. Isn't it a fact that Luis's last name was Jimenez?

7 A. Yes.

8 Q. Isn't it a fact at one point, when he was using his real  
9 name, that somebody said, I don't deal with you people, or  
10 something like that?

11 A. I don't recall that.

12 THE COURT: Mr. Schmidt, why don't you find a good  
13 time to break.

14 MR. SCHMIDT: Now is a good time to break.

15 THE COURT: Ladies and gentlemen of the jury, I don't  
16 think I have ever had a lawyer say anything but "now is a good  
17 time to break" when asked the question.

18 Please be back at a quarter to 2, a little more than  
19 an hour. Thank you.

20 (Jury exits courtroom)

21 (Continued on next page)

IAP8KET4

Sinclair - Cross

1 THE COURT: All right. A quarter to 2. Thank you.

2 MS. FLETCHER: Your Honor, given that Mr. Sinclair is  
3 now on cross-examination, would your Honor please instruct him  
4 about the rules?

5 THE COURT: I instruct you about the rules, which  
6 means you can't talk to the government. You can talk to the  
7 agent about technical things, where you're going to meet, what  
8 you're going to have lunch, but I am telling the government  
9 they can't talk to you, you can't talk to them.

10 MS. FLETCHER: Thank you, your Honor.

11 (Luncheon recess)

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IAP8KET4

Sinclair - Cross

AFTERNOON SESSION

1:45 p.m.

(Jury present)

WILLIAM SINCLAIR, resumed.

THE COURT: Please be seated.

Mr. Schmidt, you may continue.

BY MR. SCHMIDT:

Q. Now, you testified that some people had more chargebacks -- some sales reps had more chargebacks than others, right?

A. Yes, sir.

Q. Mr. DiQuarto was one that actually had low chargebacks, is that right?

A. Yes.

Q. He figured out a nice scheme to prevent chargebacks, didn't he?

A. Yes.

Q. What was that scheme that he used? What was one of the schemes that he used?

A. What he thought of was to have customers move the investment, transfer the investment off of whatever credit card they used with us to another credit card, this way if they tried to charge back they couldn't.

Q. He kept that a secret for a long time, didn't he?

A. I believe so, yes.

Q. Andrew Owimrin didn't do that, did he?

IAP8KET4

Sinclair - Cross

1 A. I cannot say with certainty that he did not.

2 Q. Let's say it the other way then. Do you know if he did it?

3 A. No.

4 Q. Now, Pete also had customers take cash advances from his  
5 credit card and have the check sent to the office, didn't he?

6 A. Yes.

7 Q. And that's another way of preventing chargebacks, isn't it?

8 A. We believed so. I'm not certain that that's actually the  
9 case.

10 Q. Well, if you take a cash advance, there is no product, is  
11 there?

12 A. What do you mean by "product"?

13 Q. Well, if you went to your bank and took a cash advance on  
14 your credit card, would there be a product that you were  
15 purchasing?

16 A. I guess not, no.

17 Q. That's pretty obvious, isn't it?

18 A. OK.

19 Q. Am I correct?

20 A. Yes.

21 Q. Thank you.

22 You called Pete one of your real productive people  
23 because he was really one of your scammers, wasn't he?

24 MR. SCHMIDT: I will withdraw that question.

25 Q. Now, Chris Wilson also had very high chargebacks, didn't

IAP8KET4

Sinclair - Cross

1 he?

2 A. He did.

3 Q. And he was somebody that you did not think highly of, is  
4 that right?

5 A. That is correct.

6 Q. Why was that?

7 A. Something about him, I just didn't trust him.

8 Q. And you found out later on a good reason not to trust him,  
9 isn't that right?

10 A. I did.

11 Q. He had a friend that obtained a merchant account, is that  
12 right?

13 A. Yes.

14 Q. What was that merchant account?

15 A. What was it called?

16 Q. Do you remember what the account was?

17 A. The name of the company? No.

18 Q. Because you were at times having trouble with your merchant  
19 accounts, you used that merchant account, is that right?

20 A. Yes.

21 Q. And at some point, when Mr. Wilson left, he never gave you  
22 the money out of that merchant account, did he?

23 A. No. Just to clarify, that was my merchant account that he  
24 set up, it was under my company's name, just for the record.

25 Q. What company?

IAP8KET4

Sinclair - Cross

1 A. I believe Champion Business Services.

2 Q. But it wasn't your name as a signer on the account, because  
3 at that time were you able to get an account?

4 A. I was internationally. I couldn't get any account set up  
5 domestically because I was on the TMF list, which is why this  
6 came up.

7 Q. Now, you actually also obtained an account internationally,  
8 right?

9 A. That's the one you're referencing.

10 Q. The one that Chris set up was international?

11 A. Correct.

12 Q. By the way -- withdrawn.

13 So another one of the top tier people was Chris  
14 Wilson, right?

15 A. As far as productivity?

16 Q. Yes.

17 A. Towards the end of his tenure with us, yes.

18 Q. Now, you heard at some point that after Chris Wilson left  
19 you -- withdrawn.

20 After Chris Wilson left you, did you understand that  
21 he was working with Pete DiQuarto?

22 A. Chris Wilson?

23 Q. Yes.

24 A. No, I did not.

25 Q. Did you know that he was -- did you understand that he was

IAP8KET4

Sinclair - Cross

1 selling grants?

2 A. After quite sometime, yes.

3 Q. And do you recall that he hired people who had no idea what  
4 was going on?

5 A. I don't know who he hired.

6 Q. Did you tell the government that he hired kids who didn't  
7 know what was going on in one of your many, many interviews  
8 with them?

9 A. I told them, which is what I know, that he had younger kids  
10 set up processing for him, merchant accounts. I don't know  
11 their names. I don't know any other info.

12 Q. Now, who brought up the idea of the Youngevity account?

13 A. Anthony Medeiros.

14 Q. How did you know Anthony Medeiros?

15 A. Back in, I want to say late 2013, I was introduced to him  
16 through Michael Finocchiaro.

17 Q. How did it come about this discussion with Mr. Medeiros  
18 about Youngevity?

19 A. He approached myself and Michael with it.

20 Q. And this was in the fall of 2015?

21 A. No.

22 Q. When was it?

23 A. Late 2014.

24 Q. Was that the time that you were having problems with  
25 chargebacks?

IAP8KET4

Sinclair - Cross

1 A. We were having problems with chargebacks the entire time.

2 Q. So how was it that you had your salespeople start  
3 selling -- withdrawn.

4 Prior to Youngevity's existence in your office, it was  
5 not common for your office to sell something like an actual  
6 particular Web site selling products, is that right?

7 A. You're asking me if we sold Web sites prior to Youngevity?

8 Q. Let me rephrase the question.

9 Before Youngevity, your most common sales were  
10 corporate setups, LLCs or S corps, right?

11 A. Part of it, yes.

12 Q. Business planning?

13 A. Yes.

14 Q. Search engine optimization?

15 A. Yes.

16 Q. Marketing, YouTube advertising?

17 A. Yes.

18 Q. Some tax?

19 A. Very rarely.

20 Q. But selling actual Web sites for a new company wasn't a  
21 frequent occurrence at your company, was it?

22 A. Correct.

23 Q. So Youngevity was a pretty big change for your company and  
24 the salespeople?

25 A. It was a different business model, yes.

IAP8KET4

Sinclair - Cross

1 Q. Now, initially it was Mr. Medeiros who came up with the  
2 model and explained it to the salespeople, is that right?

3 A. Did Mr. Medeiros come up with the Youngevity model? No.  
4 He's not part owner of the company Youngevity.

5 Q. Let me rephrase that.

6 The idea of your company selling Youngevity is  
7 something that Mr. Medeiros came up with?

8 A. Yes.

9 Q. And Youngevity was an existing ongoing company, right?

10 A. Yes, sir.

11 Q. Something like Amway?

12 A. I'm not too familiar with Amway, but if it's set up like a  
13 pyramid, then yes.

14 Q. When you say a pyramid, you're not necessarily saying it's  
15 illegal, are you?

16 A. No.

17 Q. A pyramid means that the person who buys into it makes  
18 money not only from selling the products, but gets a piece of  
19 the products that people who he or she brought in sold, is that  
20 right?

21 A. Those are the two ways, yes.

22 Q. So if you bring in a person who sells nothing, then even if  
23 you're above that person in that pyramid, you make nothing,  
24 right?

25 A. Can you repeat that question, sir? I'm sorry.

IAP8KET4

Sinclair - Cross

1 Q. If you're now in the Youngevity program, and you get  
2 somebody else to join the Youngevity program, if that person  
3 sells product, you get a piece of it, right?

4 A. Which person are you referring to?

5 Q. The person that you brought in.

6 A. Correct.

7 Q. If the person you brought in sells nothing, you get  
8 nothing?

9 A. From that particular person.

10 Q. That is correct.

11 A. Yes.

12 Q. So for you to make money, you want the person or persons  
13 you bring in to sell product, is that right?

14 A. It is.

15 Q. And that's part of the Youngevity model, isn't that right?

16 A. Yes, sir.

17 Q. And the salesmen understood that, right?

18 MS. FLETCHER: Objection.

19 THE COURT: Sustained.

20 Q. You made sure that the salesmen understood that, right?

21 MS. FLETCHER: Objection.

22 THE COURT: I will allow that.

23 A. I did.

24 Q. Now, what was your understanding at the beginning, when you  
25 started with the Youngevity model, of how long a Web site would



IAP8KET4

Sinclair - Cross

1 take to be, whatever they call it, put up on the Internet?

2 MS. FLETCHER: Objection to foundation.

3 THE COURT: I will allow it.

4 A. Your question is how long would it take for --

5 THE COURT: Rephrase the question.

6 Q. Not how long would it take. What was your expectation of  
7 how long it would take to set up that Web site once it sold?

8 A. If I remember correctly, I want to say within two weeks.

9 Q. And what else is in the Youngevity package that was being  
10 sold?

11 A. If I remember correctly, I think there was some light  
12 marketing, and then you get like a sample basket from  
13 Youngevity with some of their products.

14 Q. Now, you told the -- withdrawn.

15 The salespeople were told basically what was  
16 supposed -- withdrawn.

17 Now, in the beginning, when Youngevity was being  
18 sold -- withdrawn that again.

19 The salesmen had forms on their desk about the  
20 products that they were going to sell when they spoke to  
21 customers. I am not talking about Youngevity. I am talking  
22 about before that. Is that right?

23 A. I'm sorry. Can you repeat the question, sir?

24 Q. Before Youngevity there were forms about what products were  
25 available for the salespeople to sell to customers, is that

IAP8KET4

Sinclair - Cross

1 right?

2 A. Yes.

3 Q. And it included many items, including the business plan and  
4 the search engine optimization and marketing, and bronze,  
5 silver and gold bookkeeping, and I think some other bronze,  
6 silver and gold something else, right?

7 A. Everything that we had available to them.

8 Q. Now, when they started selling -- withdrawn.

9 Now, who was supposed to set up the Web site for  
10 Youngevity -- withdrawn.

11 What was your understanding of who was supposed to set  
12 up the Web site for Youngevity when you first started selling  
13 it?

14 A. Someone I had never spoken to via Anthony Medeiros; it was  
15 his guy.

16 Q. So your understanding, and I will use the word  
17 "fulfillment," was going to be taken care of by Anthony  
18 Medeiros by having another entity or person do that work,  
19 correct?

20 A. Correct.

21 (Continued on next page)

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IAPJKET5

Sinclair - cross

1 Q. And when you first had your salespeople sell Youngevity,  
2 did you have the expectation that the websites were actually  
3 going to be built?

4 A. I did.

5 Q. Did the salesmen have -- were the salesmen informed that  
6 they expected, expected to have the websites up and running  
7 within two weeks?

8 A. Yes.

9 Q. Was it your expectation that the marketing and the  
10 advertising, though light for the product, would then take  
11 place after the site was up?

12 A. Yes.

13 Q. Was it explained to you that for any sales that are made,  
14 that it would be expected that it would take 60 or 90 days for  
15 the first check to be issued?

16 MS. FLETCHER: Objection.

17 THE COURT: Sustained as to form. Start again.

18 BY MR. SCHMIDT:

19 Q. By the way, from whom were you getting the information  
20 about how Youngevity was going to work?

21 A. Anthony Medeiros.

22 Q. Now, were you told by Mr. Medeiros that because of the  
23 setup, the first check was for a customer would come from  
24 Youngevity in 60 or 90 days?

25 MS. FLETCHER: Objection.

IAPJKET5

Sinclair - cross

1 MR. SCHMIDT: Was told by Mr. Medeiros.

2 THE COURT: Basis?

3 MS. FLETCHER: For the objection? It is hearsay if  
4 offered by Mr. Sinclair.

5 MR. SCHMIDT: Sorry?

6 THE COURT: Sustained.

7 MR. SCHMIDT: Isn't this --

8 THE COURT: Sidebar.

9 (Continued on the next page)

10 (At sidebar)

11 THE COURT: Put it on the record. Go ahead.

12 MS. FLETCHER: This is hearsay offered by Mr. Owimrin.  
13 801 (d)(2)(E) only a applies for statements of an opposing  
14 party's co-conspirators. He is seeking to offer the statements  
15 of his own client's co-conspirators.

16 MR. SCHMIDT: Your Honor, I am certainly not seeking  
17 it for the truth that it is going to happen. I am offering it  
18 for this is his belief, right, for his state of mind, and when  
19 he tells the salespeople the same information.

20 It goes to the state of mind. It is not for the truth  
21 it will actually happen.

22 THE COURT: Give me what the question is again.

23 MR. SCHMIDT: Was he told that the first --

24 THE COURT: Was he told by a co-conspirator?

25 MR. SCHMIDT: Right, the first check was going to be

IAPJKET5

Sinclair - cross

1 issued in 60 or 90 days? That is was his belief whether it is  
2 true or not it certainly wasn't true.

3 THE COURT: For whose belief?

4 MR. SCHMIDT: For his belief because he has to have a  
5 belief before he passes it on to the salespeople.

6 MS. FLETCHER: His belief is not relevant here. If  
7 what Mr. Schmidt is trying to do is establish what his client  
8 understood, his client is the person to testify about that, not  
9 Mr. Sinclair.

10 MR. SCHMIDT: Of course, I can have somebody for my  
11 client's state of mind bring a statement out that would affect  
12 his state of mind. We do that all the time.

13 MS. FLETCHER: If what he is trying to do is elicit  
14 what Mr. Sinclair told his client something, he can do that,  
15 and depending on what that something is, the government may  
16 seek a limiting instruction for the purpose for which that  
17 statement is being offered, but his state of mind is not --

18 THE COURT: Wait. Just let me think about it for a  
19 minute. (Pause) What is the relevance of his state of mind?

20 MR. SCHMIDT: His state of mind is whether or not he  
21 is intentionally committing a fraud when he says something on  
22 the telephone because he gets the information from his boss.  
23 That is his state of mind.

24 MS. FLETCHER: That is your client's state of mind?

25 MR. SCHMIDT: That's right.

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Sinclair - cross

1 THE COURT: One at a time.

2 MR. SCHMIDT: I can go backwards and forwards. I can  
3 go backwards where he told me client, where did he get that  
4 information from. I am trying --

5 THE COURT: I am still trying to understand.

6 MR. SCHMIDT: Nothing is coming in for the truth. It  
7 is just coming in for what it was said, not the truth.

8 THE COURT: Wait. Just a moment.

9 MR. SCHMIDT: In the afternoon I get more excited.

10 MS. FLETCHER: Oh, boy!

11 THE COURT: Not the oxy, is it?

12 You're doing it for Sinclair's state of mind and that  
13 is not relevant.

14 MR. SCHMIDT: I am not doing anything for the truth.

15 None of these questions are asking or saying what was  
16 said is the truth.

17 THE COURT: What are you trying to establish?

18 MR. SCHMIDT: It was for what was said so it was  
19 passed on to the salesmen so when the salesmen are saying it,  
20 it was because it was said to them.

21 THE COURT: Why don't you ask him directly?

22 MR. SCHMIDT: I thought I would do it progressively.  
23 I can ask him the next step, yes.

24 MS. FLETCHER: That is the government's point. If he  
25 wants to ask Mr. Sinclair what Mr. Sinclair told his client,

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Sinclair - cross

1 that is fine. By seeking to introduce how Mr. Sinclair came to  
2 that understanding, what he is doing is bolstering the truth of  
3 the statement. That is why that is improper. It doesn't  
4 matter.

5 (Multiple voices)

6 MR. SCHMIDT: We all agree that it was somewhat of a  
7 fraud in that it is going to happen that way.

8 THE COURT: Do it directly. You are better off. It  
9 will go faster that way.

10 (Continued on next page)

IAPJKET5

Sinclair - cross

1 (In open court)

2 BY MR. SCHMIDT:

3 Q. Mr. Sinclair --

4 A. Yes.

5 Q. -- you had your salespeople selling Youngevity packages.  
6 Is that right?

7 A. Yes.

8 Q. Before you had them selling them Youngevity packages, you  
9 told them some things about Youngevity, right?

10 A. Yes.

11 Q. One of the things that you told him was that the website  
12 would be up and running in about two weeks. Is that right?

13 A. That sounds right, yes.

14 Q. Another thing that you told them was that the money from  
15 the sales of the website would start in 60 or 90 days from the  
16 sale. Is that right?

17 A. That also sounds right, yes.

18 Q. At the time that you told the salespeople that, you  
19 believed it was true. Is that right?

20 MS. FLETCHER: Objection.

21 THE COURT: I'll allow it. Move on.

22 Q. Is that right?

23 A. Should I answer that?

24 THE COURT: Yes. If you can, yes. Did you believe it  
25 was true?



IAPJKET5

Sinclair - cross

1 THE WITNESS: I did.

2 (Off-the-record discussion)

3 BY MR. SCHMIDT:

4 Q. Now, at the time that you started the fulfillment of the  
5 Youngevity package, was to be done through Anthony Medeiros.  
6 Is that right?

7 A. To be clear, he wasn't the one fulfilling it. It was  
8 his --

9 Q. It was through Anthony Medeiros?

10 A. Correct.

11 Q. Now, there came a time when you realized that websites were  
12 not being set up within the time period that you believed it  
13 was supposed to, right?

14 A. Yes.

15 Q. You took steps to try to get those websites actually set up  
16 in a faster, shorter period of time. Is that right?

17 A. Yes.

18 Q. You got involved with some other fulfillment people to do  
19 so. Is that right?

20 A. Yes.

21 Q. And who was that fulfillment person?

22 A. Ray Quiles.

23 Q. What was Ray Quiles' company?

24 A. At that time I don't know if it was Prestige Worldwide at  
25 that time.

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Sinclair - cross

1 Q. What was the name it could have been that was before that?

2 A. All Online Systems.

3 Q. As explained to the salespeople that the website would be  
4 set up by another person, would be advertised by another  
5 person, would be marketed by another person. Is that correct?

6 MS. FLETCHER: Objection to form.

7 THE COURT: I'll allow it.

8 A. Yes.

9 Q. So the person buying, the person buying the site had the  
10 option of having input as to what the actual website might have  
11 looked like or the name of the website. Is that right?

12 A. I believe so. It is limited because you're selling  
13 Youngevity's products, so it is a --

14 Q. But we all go online and we see different -- what the first  
15 page of it looks like, right, and while it obviously has to  
16 include Youngevity, there are other things you can have on it,  
17 right?

18 A. That is my recollection of it, yes.

19 Q. If the person wanted to could also receive business cards,  
20 that they could pass around to friends and neighbors and  
21 family, right?

22 A. I think so, yes.

23 Q. But for the purpose of selling through the website, the  
24 customer really wasn't involved in that operation. Isn't that  
25 right?

IAPJKET5

Sinclair - cross

1 A. Some through the website?

2 Q. The sales for people to go online and buy items on the  
3 website, the person, the customer who purchased the Youngevity  
4 package isn't going to be doing the website stuff, are they?

5 A. Correct.

6 Q. If the website is marketed correctly, then the person  
7 basically would be getting the proceeds from the sales of the  
8 products on the website without doing very much, right?

9 A. Theoretically, yes.

10 Q. "Theoretically," would mean if you spend a minimum amount  
11 of money for the website and just get the basic advertising, it  
12 is only going to go so far, right?

13 A. That is partially true because there is not only one way  
14 they can --

15 THE COURT: Why do you say theoretically? Why put  
16 that hedge in?

17 THE WITNESS: With specific regard to the marketing  
18 aspect of it, your Honor?

19 Because our marketing was not done by a professional  
20 firm. It was done by someone who had worked at the tax level,  
21 had no experience really doing that for successful business  
22 owners.

23 THE COURT: All right. Go ahead.

24 BY MR. SCHMIDT:

25 Q. So the people who previously worked at the Tax Club might

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Sinclair - cross

1 have known that. Is that right?

2 MS. FLETCHER: Objection.

3 THE COURT: Sustained as to form.

4 Q. Now, so you didn't go and tell your salespeople that we  
5 have an incompetent fulfillment person as to the website, did  
6 you?

7 A. I don't know if I used those specific words to describe  
8 Ray.

9 THE COURT: In sum or substance, did you describe Ray  
10 that way?

11 THE WITNESS: Regarding Youngevity, I can't say with  
12 certainty. Did we voice complaints about Ray's overall team or  
13 his company between 2014 and 15? Yes. Do I know for sure I  
14 ever that was regarding Youngevity? No.

15 Q. You skipped a little bit ahead here.

16 A. Sorry.

17 Q. There is no question that there was problems in fulfillment  
18 through Mr. Medeiros. Is that right?

19 A. Correct.

20 Q. There was problems in fulfillment through Ray, right?

21 A. Yes.

22 Q. You also used another fulfillment company. Is that  
23 correct?

24 A. We did.

25 Q. Which one was that?

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Sinclair - cross

1 A. I believe their name was Impact.

2 Q. Did you use Thoth also?

3 A. That's way before 2014. Actually, it was in the beginning  
4 of 2014, yes.

5 (Off-the-record discussion).

6 Q. So you didn't know who Mr. Medeiros was using, right?

7 A. I never spoke to him, no.

8 Q. You don't know how incompetent they would be, but you  
9 learned that somewhere along the line they were totally  
10 incompetent?

11 A. Yes.

12 Q. Building a website isn't that difficult for people who have  
13 built websites before. Is that right?

14 MS. FLETCHER: Objection.

15 THE COURT: Sustained.

16 Q. Now, were you aware that somebody that worked with Ray had  
17 built websites before?

18 A. Yes.

19 Q. So while he didn't have the real experience that perhaps  
20 you or I would go to if we wanted a really good website, he  
21 still had the experience of building a website, right?

22 A. Yes.

23 Q. There was no reason to believe that Andrew Owimrin knew  
24 anything other than that?

25 MS. FLETCHER: Objection.

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Sinclair - cross

1 THE COURT: Sustained.

2 Q. Now, if we can show the witness Y, G Y 36, please. If you  
3 can look at the bottom left, do you recognize that name?

4 A. Yes, I do.

5 Q. Do you recognize the company that person works for?

6 A. Yes.

7 Q. So would it be fair to say that thought training is the  
8 same thing as Impact?

9 A. It is, yes.

10 Q. So you were using Thoth not just early 2014, you were using  
11 Thoth even 2016. Is that right?

12 A. To make a correction to be on the record, I got confused.  
13 I thought Thoth was a company we had used earlier before 2014  
14 and started. We did not use them in early 2014. They came  
15 much later only during this time-frame.

16 Q. Generally after a sale of a Youngevity product is made --  
17 withdrawn.

18 After any sale, the next person who usually gets to  
19 talk to the customer is the compliance person. Is that right?

20 A. After the sales rep?

21 Q. Yes, the sales was made and the sales rep talks to the  
22 person and it it goes to the compliance person?

23 A. Yes.

24 Q. You called the compliance person a secretary a couple of  
25 times, right?

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Sinclair - cross

1 A. I called our compliance officers as secretaries, yes.

2 Q. They're actually communicating with potential clients and  
3 making appointments, aren't they?

4 A. They are.

5 Q. Then they are making sure that the customer, after he  
6 agrees to make a purchase, understands the contract that  
7 they're going to sign. Isn't that right?

8 A. It is.

9 Q. Part of the script that the compliance person has is to go  
10 over every paragraph in the contract with the customer. Is  
11 that right?

12 A. They summarize it.

13 Q. Now, you used to record the compliance people, didn't you?

14 A. We did.

15 Q. You used to record them to make sure that they covered all  
16 of the contract. Is that right?

17 A. We did.

18 Q. If they didn't use every single same word as the contract,  
19 they expressed every single issue in the contract with the  
20 customer. Is that right?

21 A. They got the general point across. They covered the  
22 content of the contract.

23 Q. Now, when you said earlier that sometimes you were called  
24 in, would sometimes even before you were called in, would the  
25 salesperson be called in to talk, to continue talking to the

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Sinclair - cross

1 customer?

2 A. Can you be more specific so I can answer you accurately?

3 Q. If the customer raises a question about the contract after  
4 being reviewed with him or her, would the compliance person  
5 automatically go to you or Mike or would they also go sometimes  
6 to the salesman that sold the item?

7 A. It would vary.

8 Q. On a few occasions the sale would not go through, right?

9 A. Yes.

10 Q. On most of the occasions, the sale would go through?

11 A. Yes.

12 Q. And that's even not only does the sales rep have this  
13 conversation, it is the compliance person going over with the  
14 customer the contract, right?

15 A. Which conversation? About the contracts content?

16 Q. Sales rep, if there is an agreement, goes to compliance?

17 A. Yes.

18 Q. Compliance makes sure that the customer knows what the  
19 agreement says?

20 A. Agreed.

21 Q. If the customer understands, he goes through the signing  
22 process?

23 MS. FLETCHER: Objection.

24 Q. Correct?

25 THE COURT: I'll allow it.



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Sinclair - cross

1 A. Yes.

2 Q. And most of the time it is done by e-signature because that  
3 is a much faster way of doing it?

4 THE COURT: I am sorry. Let me go back to the earlier  
5 ruling. The jury will disregard the answer to the last  
6 question. You can rephrase it.

7 BY MR. SCHMIDT:

8 Q. It is your understanding that for the compliance person to  
9 be completed with the job and the sale to go through, the  
10 customer had to understand the contract?

11 MS. FLETCHER: Objection.

12 THE COURT: What were your instructions to the  
13 compliance people about going over the contract with the  
14 customer, if any?

15 THE WITNESS: Your Honor --

16 THE COURT: What instructions did you give them?

17 THE WITNESS: We instructed our compliance officers to  
18 go over the contract and have the customer sign and set up a  
19 welcome call.

20 THE COURT: The only thing was that you told them to  
21 do with the customer was to go over the contract?

22 THE WITNESS: Yes.

23 THE COURT: Did you give them instructions to make  
24 sure the customer understood the contract?

25 THE WITNESS: We'd cross that bridge if they didn't,

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1 your Honor.

2 THE COURT: How did you know one way or the other what  
3 their operation of mind was?

4 THE WITNESS: If they didn't question it, then we  
5 generally didn't, either. In addition to that, your Honor --

6 THE COURT: Wait just a moment. I want to make sure I  
7 understand you. If when the compliance person went over the  
8 contract, the customer did not ask any questions, what then?

9 THE WITNESS: Then it is just assumed, like the sale  
10 was, they just assumed it.

11 THE COURT: What is it, assume what?

12 THE WITNESS: The sale. We get them to sign and I  
13 believe what is said at the end is do you understand and agree  
14 to the charges. Most people just said yes because they were  
15 already sold at that point.

16 THE COURT: All right.

17 BY MR. SCHMIDT:

18 Q. You're having a real difficult time with acknowledging --

19 MS. FLETCHER: Objection.

20 THE COURT: Sustained. The government is standing.  
21 The jury will disregard, as you know, any statements of the  
22 lawyers. Just ask a question.

23 BY MR. SCHMIDT:

24 Q. Did you instruct the compliance people that I don't care if  
25 they understand the contract as long as they say yes at the

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Sinclair - cross

1 end?

2 A. We didn't have that conversation. It was go over the  
3 contract with them, make sure they sign it, set up a welcome  
4 call.

5 MR. SCHMIDT: One moment.

6 (Off-the-record discussion).

7 BY MR. SCHMIDT:

8 Q. So if the compliance person is reviewing the contract with  
9 the customer, if the customer asks a question that the  
10 compliance person can't answer, either the sales rep, you or  
11 Mike would come over to answer it, correct?

12 A. Yes.

13 Q. Now, after the sale was completed and acknowledged, the  
14 next step would be to inform the fulfillment people that  
15 there's a contract for X, Y and Z. Is that right?

16 A. Yes, we set up the welcome call.

17 Q. So who would contact the compliance people? Excuse me.

18 Who would contact -- thank you -- the fulfillment  
19 people, would that be the compliance person?

20 A. Yes.

21 Q. Did you ever tell -- were they all women as compliance or  
22 were they men and women in compliance?

23 A. They were all females.

24 Q. I can use women as compliance. Thank you.

25 So the women, did you ever tell the women that the

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Sinclair - cross

1 fulfillment people were bogus?

2 A. Did I use that word? No.

3 Q. Did you ever tell them that this is all a sham, that we  
4 just are using fulfillment people just so we don't get  
5 charge-backs or something like that?

6 A. I don't believe we ever had that conversation with  
7 compliance.

8 THE COURT: Did the compliance people ever receive  
9 training on the meaning of the contract?

10 THE WITNESS: The actual contents, legalities of it?

11 THE COURT: Not the legalities; what it said?

12 THE WITNESS: They had to review it. We have had  
13 conversations about the contract. It is not like a contract  
14 was just given to them and read this and make sure they sign it  
15 regardless if they understand it. That is not what I am saying  
16 at all.

17 It is just varying degrees of interpretation of the  
18 customers, and if questions arose, we would answer them.

19 THE COURT: Who is "we"?

20 THE WITNESS: The company, whether it be compliance or  
21 if it was elevated back to the sales rep or ownership or  
22 manager.

23 THE COURT: Thank you.

24 THE WITNESS: Yes, sir.

25 BY MR. SCHMIDT:

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1 Q. If there were no complaints after the contract went through  
2 and the call to the fulfillment, would the sales rep have  
3 anything to do with that customer again?

4 A. They shouldn't unless there was a call that came in from  
5 the customer.

6 Q. So generally on most completed contracts, the last time the  
7 salesperson had contact was on the sales call that resulted in  
8 the agreement, correct?

9 A. Yes.

10 Q. It would be sometimes fulfillment, if they had trouble  
11 reaching the client, might ask the sales rep to get in contact  
12 with the client so that the client can get in touch with  
13 fulfillment. Is that right?

14 A. Yes.

15 Q. But unless there is a complaint, that's it? Is that right?

16 A. Yes.

17 Q. Now, if there is a complaint, sometimes complaints come in  
18 by telephone, right?

19 A. Mostly every time.

20 Q. Sometimes they come by email, don't they?

21 A. Yeah, but most of the time by phone.

22 Q. Now, is there a main number?

23 A. Two.

24 Q. Of the company?

25 A. Which company?

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Sinclair - cross

1 Q. Was there ever a company you were functioning as --

2 A. Do you mean me or fulfillment?

3 Q. I mean you, I mean Olive Branch and its related entities?

4 A. We had separate phone numbers.

5 Q. For each? For whom?

6 A. For Olive Branch, also operating as Champion, Paramount,  
7 the list of companies before. Fulfillment has a separate  
8 location so they have a separate toll free number.

9 Q. Olive Branch has their own number?

10 A. Correct.

11 Q. Is there somebody answering the main number's call or does  
12 it go to, you know, voice or some kind of mechanical voice that  
13 tells you to push this button or that button?

14 A. Every call should be answered.

15 Q. Who is the person who usually answered it or what group?

16 A. It depends on who is being called. The main number would  
17 be the compliance manager.

18 Q. If nobody is there, the phone would go to voicemail,  
19 wouldn't it?

20 A. Yes.

21 Q. There was a setup where Fino would get an email of the  
22 voicemail, wouldn't he?

23 A. I believe so.

24 Q. And so it was Fino's responsibility to decide how to deal  
25 with that phone call initially, right?

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Sinclair - cross

1 A. Sure.

2 Q. You told us that Fino was, you know, basically was the one  
3 who handled complaints, right?

4 A. Yes.

5 Q. That doesn't mean at times a sales rep might not have been  
6 brought in or asked questions by you or Fino, but generally it  
7 was Fino dealing with it, right?

8 A. He was in charge of escalated issues and charge-backs, yes.

9 Q. So, now, if there is a call or an email -- if the email  
10 came in, it would go to that main Olive Branch Marketing, LLC  
11 at Gmail dot com? If you don't know, it is okay.

12 A. I don't recall which email it went to. I don't know if the  
13 email service was a service that lasted that long because even  
14 at the end we were checking voicemails on phones.

15 Q. You communicated with fulfillment and other sorts of people  
16 by email, didn't you?

17 A. We did.

18 Q. So the email did work?

19 A. It did work.

20 Q. Now, if -- and I think it was your testimony -- correct me  
21 if I am mistaken -- that Fino would then try to deal with any  
22 kind of problem before it escalated into a charge-back? Is  
23 that right?

24 A. Yes.

25 Q. Now, if he failed to deal with the problem and it escalated

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Sinclair - cross

1 into a charge-back, who would be the person who handles the  
2 chargeback?

3 A. Fino.

4 Q. If there was a contract signed, fulfillment either started  
5 or completed on whatever product was purchased, how would Fino,  
6 if you know, respond to the charge-back?

7 A. From a merchant company or from a customer's end?

8 Q. First the charge-back comes from the merchant company. Is  
9 that correct?

10 A. Yes, sir.

11 Q. Let's say first to the merchant company, he would he  
12 respond? Let me back up.

13 If you get a charge-back, would Fino then contact the  
14 customer to see if he can persuade the customer to withdraw the  
15 charge-back?

16 A. Yes, that's the first step is to stop the bleeding.

17 Q. Now, sometimes Fino would enlist the salesperson who made  
18 the sale to try to speak with the customer, right?

19 A. Yes, sir.

20 Q. But that was Fino's decision, and we really don't have --  
21 that was Fino's decision, correct?

22 A. Yes.

23 Q. Now, if it failed, if Fino failed to persuade the customer  
24 to withdraw the charge-back, what would be the next step?

25 A. If Fino failed to get ahold of the customer?



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Sinclair - cross

1 Q. Either get ahold of the customer or the customer refused to  
2 withdraw the charge-back?

3 A. We'd submit whatever paperwork we had, for example, a  
4 signed contract and a proof of fulfillment, and send it to the  
5 merchant company so they can make a decision, hopefully in our  
6 favor, to reverse the charge-back.

7 Q. For a charge-back to be successful generally, it is your  
8 understanding that it would have to be the contract, right?

9 A. For a charge-back to be successful from whose standpoint?

10 Q. To reverse the charge-back to be successful, there would  
11 have to be a signed contract, right?

12 A. That's certainly one prerequisite, yes.

13 Q. If for some reason there was no signed contract, it is  
14 over, right?

15 A. Yes.

16 Q. Correct?

17 A. Yes.

18 Q. The second would be that there has to be some kind of  
19 fulfillment of the contract for the merchant company to see  
20 that the client got either most or all of what they contracted  
21 for, correct?

22 A. That is not a yes or no answer. Can I elaborate?

23 Q. Let me ask you a few questions first.

24 A. Sure.

25 Q. If there was no fulfillment, what are the chances of

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1 reversing the charge-back?

2 A. Even without a signed contract?

3 Q. No. With a signed contract, we are assuming a signed  
4 contract, but if there is no fulfillment, what is the chance of  
5 reversing a charge-back?

6 A. 20 percent. That is even generous.

7 Q. Not very good?

8 A. Correct.

9 Q. Now some products were sold -- for example, an LLC -- the  
10 fulfillment would be the production of the papers and the  
11 filing of the LLC with the State Department of the state where  
12 you file those things, and that would be done, correct?

13 A. Yes.

14 Q. Now, you told us I think it was \$125 or something for an  
15 LLC. That is just the fee for the state. Is that correct?

16 A. The state filing fee, correct.

17 Q. Lawyers or specialists usually charge a fee to do the work  
18 to file an LLC?

19 MS. FLETCHER: Objection.

20 Q. Don't they?

21 MS. FLETCHER: Objection.

22 Q. In your experience?

23 MS. FLETCHER: Your Honor, objection.

24 (Pause)

25 MS. FLETCHER: There is a pending objection.

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Sinclair - cross

1 MR. PAUL: May we have a sidebar just for a second,  
2 please?

3 THE COURT: Sure.

4 (Continued on next page)

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Sinclair - cross

1 (At sidebar)

2 MR. PAUL: Quite frankly, Judge, it has to do with  
3 what transpired because you had a number of sleeping members in  
4 the jury. Juror No. 10 has been out throughout most of this  
5 trial. I just want to alert the court, and Juror No. 1 --

6 THE COURT: We have spoken to juror -- I had my Deputy  
7 speak to Juror No. 1 a couple of times.

8 MR. PAUL: I believe Juror No. 9, though awake today,  
9 was completely out yesterday. I thought this was a good time  
10 to broach the subject with the court. We may want to keep our  
11 eyes on some of the jurors.

12 THE COURT: That is appropriate and maybe you ought to  
13 have more interesting questions. Take your places.

14 (Continued on next page)

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Sinclair - cross

1 (In open court)

2 THE COURT: Ladies and gentlemen. Why don't everybody  
3 stand and stretch just for a moment. (Pause)

4 Let's proceed. I read my transcript. I made my  
5 ruling. Let's proceed.

6 BY MR. SCHMIDT:

7 Q. You had set, generally set fees for the different products  
8 that you were selling. Is that right?

9 A. Yes.

10 Q. There was a recommended price?

11 A. Correct.

12 Q. And the salespeople had the authority to go a little bit  
13 below it without seeking approval?

14 A. For the most part, that is safe to say. You can say that.

15 Q. But there was another portion that they can go further down  
16 but they would have to get your approval?

17 A. Correct.

18 Q. Or Mike's approval?

19 A. Correct.

20 Q. For an LLC, the lowest they can go with approval was  
21 something in the nature of 650, 700?

22 A. I think we have done it for 500.

23 Q. The general asking price or the retail value was \$1200?

24 A. In that vicinity.

25 Q. In point of fact, a salesman can be flexible if the

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Sinclair - cross

1 customer had the money and said yes to \$1200, they would sell  
2 it for \$1200, right?

3 A. Yes.

4 Q. And if the customer said I can't afford -- I can only  
5 afford a thousand dollars, it would be sold for a thousand  
6 dollars?

7 A. Yes.

8 Q. Now, somebody, some fulfillment person actually did the  
9 work of preparing and filing the LLC. Is that right?

10 A. Yes.

11 Q. Now, you paid them a percentage of the amount that you sold  
12 the LLC for. Is that right?

13 A. Yes.

14 Q. Were there any companies that had at least a minimum amount  
15 that you had to pay them for the LLC? Let me rephrase this.

16 Did Thoth provide a sheet that told you how much  
17 they're going to charge?

18 A. I don't know if Thoth did.

19 Q. Did one of the companies that you used have something like  
20 that?

21 A. I remember a sheet somewhere along the lines.

22 Q. Was that really locked in at that amount or that was also  
23 their, you know, suggested retail price?

24 A. There was usually wiggle room. With them, if that's what  
25 you're still asking?

IAPJKET5

Sinclair - cross

1 Q. In other words, generally fulfillment got 10 percent. Is  
2 that right?

3 A. Correct.

4 Q. Fulfillment could go as high as 15 percent?

5 A. It is safe to say that.

6 Q. If the LLC was sold for \$1200, they would get \$120, right?

7 A. Correct.

8 Q. They would also not have to pay \$125 for the filing costs  
9 would they?

10 A. You say you "they," you mean --

11 Q. Fulfillment?

12 A. No, that was not their responsibility.

13 Q. It is safe to say that anybody who is doing that work is  
14 going to get paid for it, right?

15 A. Yes.

16 Q. In fact, you formed a number of LLCs, didn't you?

17 A. For myself?

18 Q. Yes.

19 A. I had it done for me.

20 Q. By whom? By the accountant? By a lawyer?

21 A. I think Ray did it.

22 Q. Did he do it for free?

23 A. For me, yes.

24 Q. Now, you sold business plans that included coaching. Is  
25 that right?

IAPJKET5

Sinclair - cross

1 A. Business plans that included coaching?

2 Q. Yes.

3 A. The biz-op plan did not include coaching.

4 Q. Prior to Youngevity, you did sell things that included  
5 coaching. Is that right?

6 A. We sold coaching, yes.

7 Q. You sold coaching as a separate thing or part of a product?

8 A. The coaching model is different from what we predominantly  
9 sold.

10 Q. There are numerous emails back-and-forth that you had with  
11 people at Mr. Quiles' company and at Impact about problems  
12 reaching customers so they could continue their coaching  
13 process, right?

14 A. Okay, yes.

15 Q. So what product was being sold with the coaching?

16 A. It varies for each one.

17 Q. So you would sell a product, but with that product you  
18 could add coaching to it?

19 A. Yes.

20 Q. Generally for people who are starting out in a new  
21 business, it would be added to whatever their package that they  
22 were provided, you were selling?

23 A. Correct.

24 MS. FLETCHER: Objection to form.

25 THE COURT: I'll allow it.



IAPJKET5

Sinclair - cross

1 THE WITNESS: Yes.

2 BY MR. SCHMIDT:

3 Q. And, obviously, the salespeople were aware of that you can  
4 sell a product alone or with coaching. Is that right?

5 MS. FLETCHER: Objection.

6 THE COURT: Sustained. Now sustained. Stop!

7 Rephrase.

8 BY MR. SCHMIDT:

9 Q. Were the salespeople informed that they can sell coaching  
10 with some but not all of the products that you sold?

11 A. I don't recall.

12 Q. Do you know what products sometimes included coaching?

13 A. I can't. Coaching is a different product. Can you ask me  
14 the question again, please?

15 Q. Let me rephrase it.

16 Your fulfillment people sometimes coached your  
17 customers?

18 A. Yes, sir.

19 Q. Sometimes it was easy for them to make the appointments and  
20 sometimes it was difficult for them to make the appointments,  
21 right?

22 A. Yes.

23 Q. Usually you heard about it when it was a problem?

24 A. Correct.

25 Q. Now, they're fulfilling something that you sold?

IAPJKET5

Sinclair - cross

1 A. Yes, sir.

2 Q. What is it that you sold that they're fulfilling by  
3 coaching?

4 A. In general terms?

5 Q. In general terms?

6 A. Between 2014 and the end of 2015?

7 Q. That is correct.

8 A. Any of the biz-op related products or services, including  
9 an LLC or corporation setup, business plan, Corporate Credit,  
10 any social media marketing, business plans, logos, as you had  
11 mentioned earlier, some of them got business cards, and in a  
12 very few situations we even had to billed websites.

13 Youngevity, maybe a handful of people got their taxes done.  
14 That is not something that we offered. That is really the  
15 scope of those.

16 Q. For example, for Corporate Credit, right, you told us that  
17 banks really want somebody to have two years and some proof of  
18 an ongoing nature of the business before they'll give Corporate  
19 Credit, correct?

20 A. Correct. That is what I was told.

21 Q. But preparing yourself and your business to apply for  
22 Corporate Credit is helpful, isn't it?

23 A. Agreed.

24 Q. And the coaching by the fulfillment people would do that or  
25 try to do that with the customer. Is that right?

IAPJKET5

Sinclair - cross

1 MS. FLETCHER: Objection.

2 MR. SCHMIDT: I withdraw that question and rephrase  
3 it.

4 BY MR. SCHMIDT:

5 Q. It was your understanding you're paying the fulfillment  
6 people to help the customers get ready for their application  
7 for Corporate Credit. Is that right?

8 A. Okay. Those are two completely different questions.  
9 You're asking me if it was our understanding -- can you please  
10 repeat the last question, sir. I apologize.

11 Q. I'll try to take make it a little simpler.

12 If coaching came with the Corporate Credit product  
13 sale --

14 A. Yes.

15 Q. -- the coaching that you understood would be done would be  
16 to help the customer prepare for the application to get  
17 Corporate Credit?

18 A. One had nothing to do with the other.

19 Q. So what kind --

20 THE COURT: What was the purpose of the coaching?

21 THE WITNESS: The coaching is another product, another  
22 service that we offered, your Honor, to give us some type of  
23 documentation to show that we did something for the customer.  
24 It is not like these were, you know, successful online  
25 retailers teaching people with no experience how to be

IAPJKET5

Sinclair - cross

1 successful online. It was anyone hired who knows they're  
2 telling people okay, what do you want to sell, teddy bears?

3 There was no --

4 THE COURT: There was nothing to it?

5 THE WITNESS: Correct.

6 BY MR. SCHMIDT:

7 Q. There is a product called Corporate Credit coaching, isn't  
8 there?

9 A. We referred to it as Corporate Credit. I don't know what  
10 you are looking at.

11 Q. So explain to me, then, what products do you sell coaching  
12 for?

13 A. Coaching is generally a separate -- okay. To really  
14 explain this to the jury and the men and women and your Honor  
15 to all understand this, we spoke about separate sales that were  
16 made. There are three sales with this online model, okay?

17 If someone is looking to start an online business,  
18 they Google it, whatever case they come across, specific people  
19 looking to target people like this who want to work from home,  
20 and it is usually a guy dressed in a suit, standing next to a  
21 Ferrari with a pile of cash. It looks ridiculous. That is the  
22 first purchase, usually like \$50.00, \$100.00. And with that  
23 you get like a booklet or CD, enough to spark someone's  
24 interest to investigate further into it, right?

25 The second purchase comes when these coaching

IAPJKET5

Sinclair - cross

1 companies call everybody who -- because you have to leave your  
2 contact numbers -- they call them, all these people who spend  
3 the 50 or \$100.00 to see if they can upsell them on what is  
4 called a coaching program.

5 What comes with that coaching program, depending on  
6 how much money you think they're willing to invest or this  
7 coaching company can get out of them, they get X amount of  
8 lessons with said coaching company. They get a website.  
9 Sometimes they don't even get a website built for them if their  
10 budget isn't big enough. Sometimes it is like a build-your-own  
11 type of thing, and some assistance on picking out products.

12 However, from my understanding for liability issues,  
13 they always make the customer pick their own product, who 99  
14 percent of the time has never had any experience with any type  
15 of business, specifically an internet business, okay, which is  
16 why I say theoretically before because from the beginning --

17 MR. PAUL: Judge, I object to this.

18 THE COURT: Sustained at this point. Proceed. You  
19 have answered the question. I repeat it sounds like there is  
20 nothing to it, the coaching. Is that right?

21 THE WITNESS: Correct, your Honor.

22 BY MR. SCHMIDT:

23 Q. If I may, your Honor, I would like to show the witness an  
24 exhibit marked FMT-8.

25 (Off-the-record discussion)

IAPJKET5

Sinclair - cross

1 MR. SCHMIDT: May I approach, your Honor?

2 THE COURT: Yes.

3 (Pause)

4 BY MR. SCHMIDT:

5 Q. Now, do you recognize that document?

6 A. This specific document, I don't offhand.

7 MS. FLETCHER: Your Honor, I am sorry. I don't  
8 believe the government has a copy of that document. Could I  
9 have just a moment to make sure we have one?

10 THE COURT: Yes.

11 MS. FLETCHER: Mr. Schmidt, do you have another copy?

12 MR. SCHMIDT: My copy I gave to the witness. If you  
13 like, I can go onto something else and come back to that.

14 THE COURT: Yes, please. Take it back.

15 (Pause)

16 THE COURT: You need to show it to the government now.

17 MR. SCHMIDT: We'll make copies now and get back to  
18 it.

19 THE COURT: All right.

20 BY MR. SCHMIDT:

21 Q. Now, did you receive lists from the fulfillment people as  
22 to what products that would be sold?

23 A. We did.

24 Q. Usually when you receive those, that was an attachment to  
25 an email that went into your computer?

IAPJKET5

Sinclair - cross

1 A. Yes.

2 Q. So you at least knew what product could be sent to that  
3 fulfillment company to do the fulfillment?

4 A. Yes, sir.

5 Q. Now, Thoth is the same thing as Impact, isn't it?

6 A. It is a fulfillment company, yes.

7 Q. Now, Impact is opened by whom?

8 A. I don't remember his name offhand. I believe it is two  
9 people.

10 Q. Impact, you get some of their lists, don't you? You got  
11 some of the lead lists from Impact, didn't you?

12 A. I did.

13 Q. Did Impact actually do real fulfillment?

14 A. By real fulfillment, what do you mean?

15 Q. That is a good question.

16 In your mind, did anybody do real fulfillment --  
17 excuse me. What do you consider real fulfillment?

18 A. Real fulfillment?

19 THE COURT: Objection sustained. Ask a question. He  
20 didn't use the term. You did.

21 BY MR. SCHMIDT:

22 Q. Now, did you ever have any charge-backs related to LLCs?

23 A. Can you be more specific, please.

24 Q. Did anybody who sold an LLC seek to have the money charged  
25 back from their credit card?

IAPJKET5

Sinclair - cross

1 A. Of course.

2 THE COURT: You have to speak loudly, sir.

3 THE WITNESS: Yes, sir.

4 Q. Were you aware whether or not that LLC had been -- do you  
5 know how many cases there were of that?

6 A. I don't.

7 Q. Do you know if the LLCs were actually fulfilled?

8 A. The LLCs should have been fulfilled unless we could not  
9 contact the client to select a business name generally. When I  
10 say "we," I mean whoever was fulfilling for us.

11 Q. Now, there was different social media products that you  
12 sold. Is that correct?

13 A. Yes, sir.

14 Q. Now, the products that you sold, what did the social media  
15 product include -- withdrawn.

16 There was probably bronze, silver and gold for social  
17 media?

18 A. I think that is safe to assume.

19 Q. Why don't you start with the minimum and work your way up  
20 to the gold.

21 A. I don't remember offhand.

22 Q. Now, when you applied for a merchant account using I think  
23 Edge -- is that correct?

24 A. That sounds familiar, yes.

25 Q. When you applied for that, you needed to fill out a



IAPJKET5

Sinclair - cross

1 questionnaire. Is that right?

2 A. Yes.

3 Q. Did you fill out a questionnaire?

4 A. Every single merchant account had a questionnaire.

5 Q. Did you tell the truth in the questionnaire?

6 A. I am not looking at it so I don't know.

7 Q. So, in other words, what you're saying now is that without  
8 looking at these questionnaires, you don't know whether you  
9 lied or told the truth to the banks or the credit people. Is  
10 that what you're saying?

11 A. I don't remember if I was completely truthful on the Edge  
12 application is what I'm saying.

13 Q. So on some applications you were not completely truthful?

14 MS. FLETCHER: Objection.

15 THE COURT: Sustained.

16 Q. Were you truthful on all of your applications?

17 A. I can't say that with certainty, sir.

18 Q. Does that mean that you believe you lied on applications?

19 MS. FLETCHER: Objection; asked and answered. He said  
20 he does not remember.

21 THE COURT: Just a moment.

22 When you filled out these applications, were you  
23 truthful?

24 THE WITNESS: Generally, I was.

25 THE COURT: Sometimes you weren't?

IAPJKET5

Sinclair - cross

1 THE WITNESS: I can't even say that, your Honor.

2 THE COURT: I take it if you were shown one, it would  
3 refresh your recollection as to that particular application.

4 Is that correct?

5 THE WITNESS: It would, sir.

6 THE COURT: Proceed.

7 BY MR. SCHMIDT:

8 Q. Let me show you BS-3, which is an email.

9 A. (Pause)

10 THE COURT: Ask your question.

11 Q. Do you recognize those documents?

12 A. This is my writing.

13 Q. Is that a questionnaire that you filled out and sent  
14 related to Edge?

15 A. Yes.

16 MR. SCHMIDT: I offer that in evidence.

17 MS. FLETCHER: Objection.

18 THE COURT: Basis?

19 MS. FLETCHER: Relevance.

20 THE COURT: Let me see it. Hand it up. Let me see  
21 your copy, sir.

22 (Pause)

23 THE COURT: Mr. Schmidt, is it to follow up on the  
24 question you already asked?

25 MR. SCHMIDT: Yes.

IAPJKET5

Sinclair - cross

1 THE COURT: I will allow it for that limited purpose.

2 MS. FLETCHER: Your Honor, may we have a sidebar?

3 THE COURT: Yes.

4 (Continued on next page)

5 (At sidebar)

6 THE COURT: This is going to his credibility?

7 MR. SCHMIDT: Yes.

8 THE COURT: You are going to ask him whether he lied  
9 on this?

10 MR. SCHMIDT: Yes. If he says yes --

11 THE COURT: That seems to me to be appropriate.

12 (Off-the-record discussion)

13 MS. FLETCHER: I withdraw the objection.

14 THE COURT: Let's proceed.

15 (Continued on next page)

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IAPJKET5

Sinclair - cross

1 (In open court)

2 THE COURT: Next question.

3 BY MR. SCHMIDT:

4 Q. On this particular application, did you tell the truth?

5 A. I didn't have it long enough to --

6 THE COURT: Take your time. You can take that down.

7 (Pause)

8 (Continued on next page)

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IAP8KET6

Sinclair - Cross

1 A. OK, Mr. Schmidt. On page 1, the second to last question  
2 says, "Does your sales staff have guidelines they need to  
3 adhere?" It's checked "yes" and says "attached." I cannot  
4 give adequate answer without seeing the attachment.

5 The first question on page 2 says, "Do you have a  
6 quality control process in place to review sales on a regular  
7 basis?" That's partially true, as calls were monitored  
8 randomly. So not every call was monitored.

9 Q. You don't think that anybody believed that every single  
10 phone call -- withdrawn.

11 You don't believe that that question means that every  
12 single phone call should be monitored, do you?

13 MS. FLETCHER: Objection.

14 THE COURT: No. I will allow it.

15 A. I can't say what anyone else was thinking without actually  
16 having that conversation with them.

17 Q. How much would it cost to have every single sales call  
18 monitored? Do you have any idea?

19 A. I don't remember his price points.

20 Q. Do you remember how long it would take to monitor every  
21 single phone call?

22 A. It's not done by hand. It's a service.

23 Q. Somebody would have to listen to the phone calls of every  
24 single individual, every single day, and you had how  
25 many -- withdrawn. You had five, six salespeople, right?

IAP8KET6

Sinclair - Cross

1 A. The most we had, I think, was up to seven at any given  
2 time, maybe eight.

3 Q. You know for a fact, don't you, that in the industry, that  
4 when calls are monitored, that means they monitor a certain  
5 number of random calls or calls per salesperson, and no one  
6 monitors all the calls, isn't that right?

7 A. No.

8 Q. You don't know that?

9 A. No, I didn't say that. I said no, because I have had  
10 previous jobs where every call was recorded to have it on file  
11 and if an issue came up, they could always go back to review  
12 it.

13 Q. That doesn't mean they are monitored, that means they are  
14 saved?

15 A. Recorded.

16 Q. Recorded.

17 A. Correct.

18 THE COURT: Move on.

19 Q. Anything else?

20 A. Yeah. There was one more here.

21 On the last page, "If customer service is outsourced,  
22 has anyone from your company visited customer service  
23 facility?" It says yes. We had not. I have never been to,  
24 nor has anyone from my organization visited Utah, which is  
25 where Thoth was located.

IAP8KET6

Sinclair - Cross

1 Q. Did you visit Ray Quiles's place?

2 A. I did.

3 Q. So it's partially true?

4 A. On page 1 it specifically says "Thoth training." So the  
5 answer would be no, to be factual. I said yes. It was really  
6 no.

7 Q. So everything else other than what you said is true?

8 A. It seems to be.

9 Q. As of June of 2015, you still were being monitored by Paul  
10 Curtis, is that right?

11 A. As per this application, it seems to be.

12 Q. Well, you said that you were being monitored on a random  
13 basis, so that question was true?

14 A. Correct.

15 Q. Are you saying that you actually don't know now or is it  
16 true?

17 A. So I don't know the specific dates, as we discussed before.  
18 I am pretty sure about Paul Curtis's monitoring. But if I put  
19 it on here, chances are we probably were. So there is a chance  
20 that that could be false as well. I will be on the record of  
21 saying that. My apologies.

22 Q. Now, I am going to show you FMT-8.

23 A. Do you need these other two back?

24 Q. Do you recognize it?

25 A. It looks like a list of Thoth products.

IAP8KET6

Sinclair - Cross

1 Q. This is something that you downloaded from Thoth in your  
2 computer, isn't it?

3 A. It doesn't say that I downloaded it. It doesn't have my  
4 e-mail on it, so I can't say that with certainty either.

5 Q. Do you recognize it at all?

6 A. Again, I can't say that this is the actual list that I got  
7 from -- I don't mean to nitpick, but I'm under oath.

8 Q. Of course.

9 MR. SCHMIDT: We offer that, your Honor.

10 MS. FLETCHER: Can I have a moment, your Honor?

11 May I have a moment to confer with counsel, your  
12 Honor?

13 THE COURT: Yes.

14 Lower, Mr. Schmidt, please.

15 MS. FLETCHER: Your Honor, we object on 801 grounds.

16 THE COURT: Let me see that, sir.

17 MR. SCHMIDT: Your Honor, it's not being offered for  
18 the actual truth. It's being offered for the existence of the  
19 document.

20 THE COURT: Sustained. You can ask it without  
21 reference to the document.

22 MR. SCHMIDT: Your Honor, may we approach?

23 THE COURT: No. Move on.

24 BY MR. SCHMIDT:

25 Q. Didn't Thoth in fact sell -- withdrawn.



IAP8KET6

Sinclair - Cross

1           Didn't Thoth, when they were going to fulfill  
2 corporate credit, was fulfilling corporate credit training or  
3 corporate credit training minimal? Isn't that what they were  
4 fulfilling?

5           MS. FLETCHER: Your Honor, if the witness is not being  
6 refreshed with that document, can it be taken back from him?

7           THE COURT: Turn it over.

8 A. Again, I don't know if this is the actual list that I had  
9 from them.

10 Q. Isn't it a fact that when you sold corporate credit, and  
11 you used Thoth as your fulfillment people, what you were  
12 selling was corporate credit training?

13 A. Again, I don't remember. I can't say yes or no. I'm  
14 sorry.

15 Q. So what you're saying now is that when you were selling  
16 corporate credit, it may or may not have included training with  
17 the corporate credit, but you just simply don't remember, is  
18 that what you're saying?

19           MS. FLETCHER: Objection. Asked and answered now.

20           THE COURT: I will allow it.

21 A. What I am saying is I don't know the specifics of -- if  
22 they offered corporate credit, I don't recall the specific  
23 product list that Thoth offered. And if they did offer  
24 corporate credit, they weren't very good at it because we  
25 didn't stay with them for a very long time at all.

IAP8KET6

Sinclair - Cross

1 Q. Didn't you explain to the people that you were selling what  
2 they were selling?

3 MS. FLETCHER: Objection.

4 THE COURT: You mean what they were buying.

5 Q. Your salespeople, you had a list of what they were selling,  
6 is that right?

7 A. As far as products we offered?

8 Q. Yes.

9 A. They did.

10 Q. Did you explain to them what the product meant, you or Fino  
11 or a fulfillment person, explain to the salespeople what it  
12 meant that they were selling?

13 A. Yes, sir.

14 Q. So if your fulfillment people were selling corporate credit  
15 that came with training, you would explain to your staff, the  
16 salespeople, that corporate credit came with training, is that  
17 correct?

18 MS. FLETCHER: Objection to form.

19 THE COURT: I will allow it.

20 A. We would go over the product list or the fulfillment  
21 company, whoever that was at the particular time, would explain  
22 was on -- what was being offered and what that came with, yes.

23 Q. So answered the question yes.

24 THE COURT: He gave his answer.

25 Again, the jury is to disregard statements of the

IAP8KET6

Sinclair - Cross

1 lawyers. The answer is what this witness just testified to.

2 Q. Now, if social media also -- withdrawn.

3 If your fulfiller included training with their social  
4 media package, you would explain that to your sales staff,  
5 wouldn't you?

6 A. Or they would, or the fulfillment team would, sure.

7 Q. If your fulfillment people included training with the  
8 business plan, you or the fulfiller would inform your  
9 salespeople that it was included, isn't that correct?

10 MS. FLETCHER: Objection. Compound and foundation.

11 THE COURT: Just rephrase it. You said "it was  
12 included." Just be more specific.

13 Q. If coaching was included -- withdrawn.

14 If the fulfillment company you were using included  
15 coaching with its business plan, you would or the fulfillment  
16 people inform the salespeople that coaching was included in the  
17 business plan, is that correct?

18 A. I'm not sure coaching would be offered on a business plan.

19 A business plan was just a booklet. So again, it's two  
20 separate products that you're referring to.

21 Q. Are you now saying that you know now that your fulfillment  
22 people, Thoth, did not include coaching with its business plan,  
23 is that your testimony?

24 A. I'm saying I don't know how coaching, you would be coached  
25 on a business plan. Maybe you're thinking that it's the same

IAP8KET6

Sinclair - Cross

1 product. It sounds like two separate products.

2 THE COURT: In other words -- again, I don't want to  
3 put words in your mouth -- selling a business plan was one  
4 product you were offering and selling coaching was the second  
5 product you were offering?

6 THE WITNESS: Yes, sir, your Honor.

7 MR. SCHMIDT: Your Honor, I now again offer FMT-8 into  
8 evidence. And if necessary, your Honor, I would like to go to  
9 the sidebar.

10 THE COURT: We will handle the sidebar at the end of  
11 the day.

12 Next.

13 Q. Now, do you recall what you gave your salespeople, if  
14 anything, as to what was included in the Youngevity pack?

15 A. As far as a tangible for them to refer to you mean?

16 Q. When asked what is included in this package you're selling  
17 me, that the salesperson can actually give an answer based on  
18 something that they were told?

19 MS. FLETCHER: Objection. It's not a question.

20 THE COURT: Ask the question directly.

21 In your mind, sir, is coaching identical to training?

22 THE WITNESS: Yes.

23 MR. SCHMIDT: That's not the question, your Honor.

24 THE COURT: No. I was asking my own question.

25 MR. SCHMIDT: OK.

IAP8KET6

Sinclair - Cross

1 THE COURT: I can do that.

2 Proceed.

3 Q. Did you give your salespeople a list of what was included  
4 in the Youngevity package?

5 A. I don't recall a list for Youngevity, as far as I can  
6 remember.

7 Q. Now, did one of your fulfillment people ask you to send  
8 them a list of what was included in the Youngevity package?

9 A. That would make more sense so they would know how to  
10 fulfill it. So I could say with a fairly reasonable degree of  
11 confidence that that could be a yes, yes.

12 Q. So if you sent the fulfillment people the list of what is  
13 included in the Youngevity package, would that mean that you  
14 previously provided that list to your salespeople?

15 A. You could say that. It was only a few things in  
16 Youngevity. It wasn't an elaborate thing. It was a Web site  
17 and maybe some social media. It wasn't something that had to  
18 be written down. It was pretty self-explanatory.

19 Q. Wasn't it a starter kit, with unique owner Web site,  
20 including a built-in shopping cart and back office, upgraded  
21 advertising Web site with links to marketing sites shopping  
22 cart and catalogue, social media marketing and business network  
23 services, variety sample product packages and e-mail and phone  
24 customer service? Isn't that what was sold with the Youngevity  
25 package?

IAP8KET6

Sinclair - Cross

1 A. Yes.

2 Q. And isn't this what your salesmen were told that they could  
3 tell the customers who they were talking to about buying  
4 Youngevity?

5 A. Yes, sir.

6 Q. Now, they were also told that they can tell their customers  
7 that the Web site will take about two weeks, and their first  
8 check should arrive in 60 or 90 days, isn't that right?

9 A. Yeah.

10 Q. And they were also told that if you don't want to do sales  
11 yourself, the package would include enough that the Web site  
12 would be up and running and that sales can start without you  
13 doing anything?

14 A. What they were told is that there were two ways --

15 Q. That requires a yes or no answer.

16 A. No.

17 MS. FLETCHER: Objection, your Honor.

18 A. I don't feel confident enough to give that a yes because of  
19 the piece at the end, so I will say no.

20 Q. Let me see if I understand then.

21 The salespeople were informed that the Web site  
22 itself, with the products, and the marketing, and the social  
23 media, and the business network service, and shopping carts and  
24 catalogues were all included, and for that you don't have to do  
25 a thing, is that right?

IAP8KET6

Sinclair - Cross

1 A. It's part of the package.

2 Q. So the information you passed on to the salespeople about  
3 the Youngevity package meant that for the Web site to be up and  
4 running, to be marketed, the purchaser did not need to do  
5 anything?

6 A. Correct.

7 THE COURT: I gather, correct me if I am overstating  
8 it or incorrect, but I gather for all of the products you were  
9 selling, part of the sales pitch was the customer didn't have  
10 to do anything except cash checks, is that correct?

11 THE WITNESS: To different degrees, depending on the  
12 business model.

13 THE COURT: All right. Thank you.

14 Q. For a business plan the customer had to have a  
15 business -- withdrawn.

16 You weren't selling a business with a business plan,  
17 were you?

18 A. You mean business as far as an idea or a business as far as  
19 like an LLC, a corporate setup?

20 Q. A business plan was basically how to best run a business,  
21 is that right?

22 A. Yes. I understand a business plan, but you said business.

23 Q. Let me then rephrase it.

24 A business plan meant advice how to run a business?

25 A. Yes.

IAP8KET6

Sinclair - Cross

1 Q. Therefore, it did require the person to do something if  
2 they wanted to be successful in using the business plan?

3 A. To that degree, yes.

4 Q. Now, a sales engine optimization, what was the customer  
5 supposed to do with sales engine optimization?

6 A. Search engine optimization?

7 Q. Excuse me. You're right. What was the customer supposed  
8 to do?

9 A. Nothing the customer could do. That was something that was  
10 supposed to be provided. So to answer your question, there is  
11 nothing that the customer could do.

12 Q. Then the search engine optimization would be for an  
13 existing business, wouldn't it?

14 A. Yes.

15 Q. It could also be for a --

16 THE COURT: Did most of your customers have existing  
17 businesses, if you know?

18 THE WITNESS: It depends on where the lead came from,  
19 your Honor. If it was an Internet business, they bought into  
20 an idea. So when you say business, they had an idea for a  
21 business. What they were getting and what they thought they  
22 were going are two different things. That's the issue, your  
23 Honor.

24 Q. Didn't people have existing businesses that they were  
25 looking for additional services?



IAP8KET6

Sinclair - Cross

1 A. So that's tough to give you a yes or no because it's open  
2 to interpretation. Can I elaborate?

3 Q. No. No, thank you.

4 A. Sorry.

5 Q. I am going to ask you to take a look -- withdrawn.

6 Did you have a customer, one customer or more that  
7 wanted to get help with her search engine?

8 MS. FLETCHER: Objection.

9 THE COURT: No. I will allow that.

10 If you know.

11 A. Did we sell one person search engine optimization is your  
12 question?

13 Q. No.

14 THE COURT: If you know, did you have any customers  
15 that wanted to get help with the customer's search engine?

16 THE WITNESS: I am sure we did.

17 Q. Wouldn't that mean that that customer already had a Web  
18 site and wanted to make it better?

19 A. That's the definition of it, yes.

20 Q. So those customers did exist?

21 A. Again, this is not a yes or no. In theory, on paper.

22 Q. I asked you if you had customers that did ask, and you said  
23 yes, isn't that right?

24 A. Yes, but --

25 Q. Is that --

IAP8KET6

Sinclair - Cross

1 THE COURT: Allow him to answer.

2 Yes but what?

3 A. You asked me another question. It's more of a concept that  
4 you're asking me to agree to, which I can't do that.

5 Q. Is not really answering a question one of the things that  
6 you teach your salespeople --

7 THE COURT: Sustained.

8 Q. -- in dealing with the customers?

9 THE COURT: The government is standing to object.  
10 Sustained.

11 Q. Now, you told us how little percentage of the money that  
12 you and Fino kept as a result of everybody that you had to pay  
13 out, is that right? Do you remember that?

14 A. Yeah. Much less than what people thought.

15 Q. You said that you had to pay the people who gave you the  
16 leads 40 percent of the sale price for the lead, is that right?

17 A. Yes, sir.

18 Q. Do you have an idea of how much you actually sold as a  
19 company in 2014?

20 A. I don't have my financials. No, sir.

21 Q. Well, would your financials of how much your company  
22 sold -- withdrawn.

23 When you did your tax returns, the businesses that  
24 were in your name was Olive Branch Marketing and Champion  
25 Business Services, is that correct?

IAP8KET6

Sinclair - Cross

1 A. Yes, sir.

2 Q. There was a company in the name of Fino. What was that  
3 company?

4 A. Paramount Business Solutions.

5 Q. So the money that Paramount got would not be included in  
6 your tax return, right?

7 A. Correct.

8 Q. In 2014, did you have any other entity that you used for  
9 merchant account?

10 A. Under my name?

11 Q. The company. The company, large company.

12 A. I don't believe so.

13 Q. Would a review of your 2014 tax return help you in  
14 remembering approximately what your gross proceeds were from  
15 Olive Branch Marketing and Champion?

16 A. Yes, of course.

17 MR. SCHMIDT: May I approach the witness?

18 THE COURT: Yes.

19 Q. I bring your attention to the second page, line 1. Why  
20 don't you read that to yourself.

21 Does that refresh your recollection as to the gross  
22 proceeds of those two companies?

23 A. Line number --

24 THE COURT: I'm sorry. The issue is not --

25 Q. The third page?

IAP8KET6

Sinclair - Cross

1 THE COURT: The issue is not what is written there.

2 First of all, you should read the third page just to  
3 yourself. But just because a number is on a page doesn't mean  
4 that it's true. The issue is only whether you now have a  
5 refreshed recollection of the gross proceeds.

6 THE WITNESS: OK. Thank you, your Honor.

7 A. The answer is yes, Mr. Schmidt.

8 Q. What was the approximate gross proceeds of the combined  
9 Olive Branch and Champion firm?

10 THE COURT: Put the document down.

11 A. It says over --

12 THE COURT: Not what it says.

13 Do you have a new recollection, independent of that?

14 You see, the idea of refreshing recollection is a  
15 lawyer is entitled to show you anything at all that may or may  
16 not refresh your recollection. A lawyer could show you a  
17 banana and say, does this refresh your recollection about the  
18 gross proceeds from these companies? It's possible it does,  
19 it's possible it doesn't. Simply because something is on the  
20 page doesn't make it so. So it's not from reading that. But  
21 reading that may give you a refreshed recollection.

22 So looking at it, do you now say, I now remember that  
23 the gross proceeds were approximately or specifically or  
24 whatever you now remember?

25 THE WITNESS: I actually thought we did more in gross

IAP8KET6

Sinclair - Cross

1 sales.

2 THE COURT: So tell him what your refreshed  
3 recollection is in regard to gross proceeds of those two  
4 companies.

5 THE WITNESS: OK.

6 MR. SCHMIDT: I withdraw that question.

7 THE COURT: After all that he is withdrawing it.

8 Ladies and gentlemen, I don't know if you can feel it,  
9 but the engineer has indeed lowered the temperature and  
10 increased the flow here. I certainly can feel it.

11 BY MR. SCHMIDT:

12 Q. I ask you to take a look at page 3, line 1, and see if that  
13 refreshes your recollection of the gross proceeds or sales of  
14 Olive Branch Marketing LLC.

15 A. Page 3.

16 THE COURT: Line 1. And again, it's not what is  
17 written there. It's whether or not what is written there gives  
18 you a new recollection.

19 A. Page 3 doesn't --

20 Q. Profit or loss.

21 A. Here we go. As I just told Judge Stein, I actually  
22 thought -- yes.

23 Q. Does that refresh your recollection that you did over \$3  
24 million in gross sales for Olive Branch Marketing in 2014?

25 A. Yes, sir.

IAP8KET6

Sinclair - Cross

1 Q. Now, I ask you to look at page 5, line 1, and ask if that  
2 refreshes your recollection as to the gross sales or receipts  
3 for Champion Business Services LLC in 2014?

4 A. Yes.

5 THE COURT: What is your refreshed recollection?

6 THE WITNESS: These numbers are actually lower than  
7 what I had in my head.

8 Q. So what do you have in your head?

9 A. I thought maybe combined -- it's impossible for me to tell  
10 individually, but combined I thought maybe it was closer to 5  
11 million.

12 Q. So if we have six, seven, eight million dollars of gross  
13 proceeds, that would be sales that you received from leads, is  
14 that correct?

15 A. Yes, sir.

16 Q. And while 40 percent of five million would be two million,  
17 does that mean you paid out at least \$2 million to the lead  
18 list people?

19 A. On paper that's what it should be.

20 Q. Now, isn't it a fact that you claimed only \$43,000 in  
21 deductions for payment in leads?

22 A. I don't know what my accountant did. I don't understand  
23 all this. I provided him with my financials. So if that's  
24 what it says, then that's what it was.

25 Q. Did you sign it?

IAP8KET6

Sinclair - Cross

1 Not that piece of paper. Did you send in your taxes?

2 A. I don't know if I signed anything.

3 Q. So you think your taxes went out without signing it or even  
4 looking at it, is that what you're saying?

5 A. I don't recall. This is 2014.

6 Q. Isn't it a fact that you sent in -- withdrawn.

7 Isn't it a fact that when you sent money to the people  
8 who supplied leads, that you didn't claim all of the sales, you  
9 only claimed a small portion of the sales so you could pay them  
10 less?

11 A. A small portion of the sales is false.

12 Q. A middle portion of the sales, is that better?

13 A. It was very difficult to underreport because they would  
14 know if you ever spoke to them. Were there situations where we  
15 did underreport? Yeah, when we got chargebacks, because they  
16 wouldn't credit us for chargebacks. So we did our best to keep  
17 it even.

18 Q. So because you knew that you were going to have  
19 chargebacks, when you told the lead sources the week of April  
20 12, 2014, you didn't claim all of them because you wanted to  
21 hold some back just in case you had chargebacks, is that what  
22 your testimony is?

23 A. No.

24 MS. FLETCHER: Objection.

25 THE COURT: I will allow it. It's cross.

IAP8KET6

Sinclair - Cross

1 The answer is no.

2 Q. Did you prepare 1099s for the lead sources?

3 A. Did I personally? No. I'm not an accountant.

4 Q. Did you have your accountant prepare 1099s for the lead  
5 sources?

6 A. I believe so.

7 Q. Do you know where those 1099s might be?

8 A. I would assume in discovery.

9 Q. Would it have been in your computer?

10 A. Yes, sir.

11 Q. So the 1099s that you sent -- which computer would that be  
12 in?

13 A. The one that the government has. You're talking about  
14 e-mail or computer?

15 Q. Which computer would the 1099s that were sent out to the  
16 lead sources, which computer would it be in, the Olive Branch  
17 computer, main Olive Branch one?

18 A. Possibly. It could also have been sent out directly from  
19 the accountant, which I think makes more sense.

20 Q. You don't think you have any 1099s in your computer?

21 A. I may. I may.

22 Q. Did you pay your staff by check or by cash? Not the  
23 salespeople. The appointment setters and the compliance  
24 people.

25 A. To my recollection, most of them got paid either by check



IAP8KET6

Sinclair - Cross

1 or direct deposit.

2 Q. Which account would that come from?

3 A. The main Olive Branch account.

4 Q. And the 1099s were prepared by, I assume your accountant,  
5 and you may or may not have received them, is that right?

6 A. I'm not saying I didn't receive them. Yeah, I may or may  
7 not have them, if that's sufficient.

8 Q. Now, who is Jolaina Aziz?

9 A. She was our compliance manager, I want to say from, maybe  
10 like the summer of 2015 through March of '17.

11 Q. Was she paid as an employee or as a 1099?

12 A. I don't have those records. I don't know, sir.

13 Q. Did Ms. Aziz also make sales to customers for LLCs?

14 A. Sales? No.

15 Q. Did any of the appointment setters or compliance make sales  
16 for LLCs?

17 A. To my recollection, it was two completely different  
18 departments. I don't remember a time where LLCs would have  
19 been sold by appointment setters.

20 Q. You communicated in Skype to a number of people, didn't  
21 you?

22 A. Yes, sir.

23 Q. Who is Kaitlin Moscatelli?

24 A. She was a compliance manager before Jolaina Aziz.

25 Q. Who was Julie?

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Sinclair - Cross

1 A. Julie was a phone name, I believe, for someone. I don't  
2 remember who used that name.

3 Q. Was it one of the compliance people?

4 A. Yeah.

5 Q. And Jen was?

6 A. Jen Lulunaj.

7 Q. Jen was Jen Lulunaj?

8 A. I don't know what name she used on the phone, if any.

9 Q. But if you said Jen to somebody, that's the person you  
10 meant, is that correct?

11 A. Correct.

12 Q. I am going to show you what has been marked BS-7.

13 MR. SCHMIDT: Actually, put that up.

14 Q. I ask you to take a look at that. Do you recognize that?

15 A. Not offhand, no.

16 Q. Were you bill.obm for your Skype account?

17 A. I believe so.

18 Q. Taking a look at that, does that refresh your recollection  
19 that Jen and Julie had some sales also?

20 A. Not at all.

21 MR. SCHMIDT: I offer this in evidence, your Honor.

22 MS. FLETCHER: Objection. 801.

23 THE COURT: Just a moment.

24 Sustained.

25 THE WITNESS: Your Honor, may I add something? I

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Sinclair - Cross

1 think I know what this means.

2 MR. SCHMIDT: No. It's been sustained.

3 THE COURT: Mr. Schmidt has answered for the Court.

4 Q. How did you receive -- withdrawn.

5 You received reports from Paul Curtis about what he  
6 said were errors made by the salespeople, is that right?

7 A. Fines or recommendations for fines?

8 Q. Recommendations for fines.

9 A. Yes, sir.

10 Q. Now, the ones that the government offered as evidence  
11 indicated that -- withdrawn -- one of them indicated that there  
12 was a recommended fine for making specific tax savings claims  
13 and giving specific tax advice without a disclaimer.

14 A. I remember seeing something like that.

15 MR. SCHMIDT: Can we put up 252, government exhibit,  
16 for everybody.

17 Can we go down?

18 THE COURT: Proceed, sir.

19 Q. Now, on page 2, the section that's highlighted is: "The  
20 first \$10,000 you invest into a business like this is 100  
21 percent tax deductible."

22 Do you see that?

23 A. I do.

24 Q. The fact is that you believed that the first \$10,000 you  
25 invest in a company can be tax deductible, is that right? That

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Sinclair - Cross

1 was your understanding?

2 A. Not necessarily.

3 Q. Isn't that in your script?

4 A. It's supposed to be up to 10,000, as per the script, which  
5 I don't know if that's even accurate as far as tax law, but the  
6 script.

7 Q. So what you're saying is that you gave a script to your  
8 salespeople that you are now saying may not have been accurate,  
9 is that right?

10 A. That's what I am saying now.

11 Q. At that time you thought it was accurate, is that correct?

12 A. I did.

13 Q. And when you gave it to Mr. Owimrin, you told him that this  
14 is true, is that correct?

15 A. I told him this is a script.

16 Q. Did you tell him the script was made up?

17 A. No.

18 Q. You told him, this is correct, this is what you can say,  
19 isn't that right?

20 THE COURT: Change that. That's compound.

21 What did you tell the salesperson when you gave the  
22 salesperson the script about the script?

23 THE WITNESS: The script was really only given to a  
24 few people, Andrew being one of them. The script was to be  
25 used as a frame of reference. It wasn't read verbatim. As far

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Sinclair - Cross

1 as we knew, as far as the highlighted line here, the first  
2 10,000, we did believe that to be accurate, as per our previous  
3 company, The Tax Club. The only difference is that the first  
4 10,000 you invest, like this is 100 percent tax deductible,  
5 it's supposed to say, according to our previous understanding,  
6 that up to the first 10,000 you invest can be up to 100 percent  
7 tax deductible. That's why it says without a disclaimer.

8 THE COURT: Let me ask it again.

9 If you remember, when you gave the script that's on  
10 the screen to the few salespeople you say you gave it to, what  
11 did you tell them about the script?

12 THE WITNESS: Stick to this, in so many words, your  
13 Honor.

14 THE COURT: All right.

15 BY MR. SCHMIDT:

16 Q. Didn't you receive reports from Mr. Curtis recommending  
17 fines if the salesperson did not keep to the script?

18 A. I did.

19 THE COURT: When you gave the script to the few  
20 salespeople you gave it to you, did you say anything about the  
21 truthfulness or lack of truthfulness of what was set forth on  
22 the script?

23 THE WITNESS: I don't remember having conversations  
24 about it being truthful.

25 THE COURT: Is it fair to say it didn't matter whether

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Sinclair - Cross

1 it was truthful or not?

2 MR. SCHMIDT: Objection, your Honor.

3 THE COURT: Fair enough. Fair enough.

4 Your next question.

5 Q. Now, you testified that sometimes there were fines and  
6 sometimes -- withdrawn -- sometimes you did not follow a  
7 recommendation for a fine and sometimes you did follow a  
8 recommendation for a fine, is that right?

9 A. Correct.

10 Q. Now, for the one that we were just talking about now, I  
11 guess using "is" as opposed to "can be," was not one that would  
12 likely be followed by a fine, is that correct?

13 A. It's safe to say.

14 Q. But there are others that certainly would be followed by a  
15 fine, is that right?

16 A. Yes.

17 Q. Now, was there someone who got fined the most, to your  
18 recollection?

19 A. I don't remember.

20 Q. Is there someone that you could say was fined thousands of  
21 dollars?

22 A. In one particular violation?

23 Q. No. Just for repeated violations.

24 A. I don't know the numbers offhand, sir. I'm sorry.

25 Q. Is there somebody that sticks in your mind of who really

IAP8KET6

Sinclair - Cross

1 was having problems in sticking to the script?

2 A. No. I'm sorry.

3 Q. Isn't it a fact that you told the government in one of your  
4 interviews that Brian Shalansky had thousands of dollars in  
5 fines?

6 A. That was a one-time -- that's why he left so we couldn't  
7 actually assess that.

8 Q. Isn't it a fact that Brian Shalansky received at least 17  
9 of these warnings?

10 A. That I can't confirm without looking at it.

11 Q. How did you receive the recommendation form from  
12 Mr. Curtis?

13 A. Via e-mail.

14 Q. Excuse me?

15 A. Via e-mail.

16 Q. So it would be fair to say that in your computer download  
17 box there would be a lot of those?

18 A. It would be there, yes, somewhere in my e-mail.

19 Q. Now, Andrew worked at Olive Branch for the whole time that  
20 Paul Curtis was monitoring, is that right?

21 A. I believe so, yes, sir.

22 Q. Reagan did also, is that correct?

23 A. Yes, sir. Let me take a step back. When Andrew came back  
24 and we were selling debt, Paul Curtis was not monitoring our  
25 calls.

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Sinclair - Cross

1 Q. We are not talking about --

2 A. The first time around.

3 Q. We are talking about from October 2014 to sometime around  
4 June or July 2015.

5 A. Yes, sir.

6 Q. Pete DiQuarto, did he get recommendations for fines?

7 A. I don't know the specifics on the fines, sir. I don't  
8 remember.

9 Q. My question was, did he get them?

10 A. I don't remember. I don't.

11 Q. So it's your testimony now that you have no recollection of  
12 whether Pete DiQuarto received recommendations for fines?

13 A. As I sit here right now, I do not remember. I apologize.  
14 I don't remember.

15 Q. Do you remember receiving fine recommendations involving  
16 people making earning representations?

17 A. Earnings claims?

18 Q. Yes.

19 A. I know that they came in. I don't know when or for who or  
20 how many, but I know that we had gotten them.

21 Q. Now, you're here testifying on a case where the defendants  
22 are Andrew Owimrin and Steven Ketabchi, is that right?

23 A. Yes.

24 Q. And for your last many meetings, the subject of your  
25 conversations were frequently Andrew Owimrin and Steven



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Sinclair - Cross

1 Ketabchi, is that right?

2 A. Yes.

3 Q. And you were shown many documents that were seized from  
4 your office or taken off of your computer, is that correct?

5 A. Yes.

6 Q. Were you shown any documents about Andrew Owimrin having  
7 made any earning representations?

8 MS. FLETCHER: Objection.

9 THE COURT: Sustained.

10 Q. Now, you talked about the number of chargebacks.

11 Now, some of the chargebacks were from people who  
12 said, you know, I change my mind, I don't want to be involved  
13 in Youngevity, right?

14 A. Sure.

15 Q. Some of them actually complained that they had a health  
16 issue and they don't think they could handle it, right?

17 A. With regard to Youngevity specifically, that I do not know.

18 Q. Now, you told us about Ray Quiles coming in and meeting at  
19 times with the staff, is that right?

20 A. Yes.

21 Q. And you said that he came in and said some people were  
22 making earning representations, is that right?

23 A. Yes.

24 Q. Now, he wasn't monitoring any of the phones, is that right?

25 A. No, he was not.

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1 Q. He said he put chargebacks in for customers, is that right?

2 A. That Ray Quiles put chargebacks in for customers, what  
3 exactly do you mean?

4 Q. Didn't you testify that Ray Quiles put chargebacks in for  
5 customers?

6 A. I'm not sure as to what you mean. Chargebacks were handled  
7 by Michael Finocchiaro. Ray Quiles had nothing to do with the  
8 merchant accounts in that time frame.

9 Q. Chargebacks are put in by the customers, aren't they?

10 A. They are.

11 Q. And at times people will tell customers to put in  
12 chargebacks?

13 MS. FLETCHER: Objection to "people."

14 THE COURT: I will allow it.

15 MR. SCHMIDT: Withdrawn.

16 Q. You testified that Mr. Pizarro was telling your customers  
17 to put in chargebacks?

18 A. Yes, sir.

19 Q. Did Ray tell you that he suggested to some customers to put  
20 in chargebacks?

21 MS. FLETCHER: Objection.

22 THE COURT: Sustained.

23 Mr. Schmidt, I have another matter at 4:30. Is this a  
24 logical point to break?

25 MR. SCHMIDT: Yes, it is, your Honor.

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1 THE COURT: How much longer do you have?

2 MR. SCHMIDT: I'd say, if we are lucky, half an hour;  
3 if we are unlucky, an hour.

4 THE COURT: Ladies and gentlemen, we are going to  
5 break for the evening. Please be here tomorrow by 9:30. We  
6 will start exactly at 9:30. You have been very prompt and  
7 everyone appreciates it. And we are going to end tomorrow at  
8 4:00. So we will go from 9:30 to 4. Keep an open mind. You  
9 have not heard all the testimony.

10 I am going to ask the lawyers -- I already have, or  
11 told the lawyers, I haven't asked them -- for both sides to  
12 step up the pace of questioning so this moves more apace. And  
13 I have reduced the temperature.

14 (Jury exits courtroom)

15 THE COURT: You may step down, sir.

16 I do have another matter so the attorneys are going to  
17 have to clean up their spots just so that lawyers can be seated  
18 there.

19 I am serious about both sides picking up the pace  
20 here. And part of that is get better control over your paper,  
21 have better, smoother procedures. One party has three lawyers  
22 and a paralegal, one party has two lawyers and a paralegal, and  
23 the other side has two lawyers. You have enough people that  
24 you can have assistance in getting the paper to the questioner  
25 in adequate time.

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1 MS. FLETCHER: We do have one evidentiary issue to  
2 raise with your Honor.

3 THE COURT: Let's do it now.

4 MR. SCHMIDT: Also, we have the Thoth issue, the  
5 exhibit issue.

6 THE COURT: FMT-8 issue. Let's handle that first  
7 since that was on the record.

8 The objection is hearsay, correct, Ms. Fletcher?

9 MS. FLETCHER: Yes, your Honor.

10 THE COURT: It's clearly hearsay.

11 MR. SCHMIDT: Your Honor, first --

12 THE COURT: I understand what you're questioning was  
13 about, but I think in part it's because, I gather so far, that  
14 there is no training. It apparently has the same substance as  
15 everything else here. There is nothing there.

16 MR. SCHMIDT: Your Honor, I object to that because --

17 THE COURT: That's not my ultimate conclusion. I am  
18 saying what it appears so far. And there is confusion between  
19 you and the witness when you keep on asking him about training.

20 MR. SCHMIDT: Your Honor, there are lots of e-mails to  
21 him about training that we are now going to get out. The point  
22 is the government has agreed on authentication of these  
23 documents coming from the Olive Branch Marketing office, which  
24 include the list of products.

25 THE COURT: You mean coming from Olive Branch.

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1 MR. SCHMIDT: Yes. And while I am not here to say  
2 that any claim made by any of the persons who testified is  
3 true, or the people that he dealt with in the industry were  
4 true, the fact is that existing in his computer is the  
5 fulfillment list from the company he is dealing with that  
6 includes training with the product. And that shows that he is  
7 not telling the truth.

8 It's not for the truth of this document because  
9 whether they trained or not is not the issue. The issue is  
10 whether the product that they were selling -- and ultimately my  
11 client, if he testifies, will explain -- the product that was  
12 being sold was indeed, for example, corporate credit training,  
13 which included the corporate credit and the training. It's not  
14 that it's truthful, but that this exists there in the office.

15 THE COURT: He is not fighting you, I don't think, on  
16 the fact that they were selling training. The training was  
17 nothing. He just said they picked up people and didn't care  
18 who they were. He is not arguing there was no training sold.  
19 He is saying the training didn't consist of anything. They  
20 were selling a lot of things that are in the miasma; they're  
21 ephemeral.

22 MR. SCHMIDT: He is saying the product sold was  
23 corporate credit and did not include training. This document  
24 says that the product being sold is corporate credit, hash mark  
25 training. I am not saying that the training occurred. I am

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1 saying that the product that was being sold by the salesperson  
2 included the training and not separately like he said.

3 MS. FLETCHER: That's the hearsay purpose of this  
4 document. This document, if authenticated and the assertions  
5 in the document were believed, would lead to the conclusion  
6 that Thoth in fact offered a product called corporate credit  
7 training. Mr. Schmidt has had ample opportunity to impeach the  
8 witness on this issue. In fact, he has had significant  
9 opportunity to impeach the witness on this issue. There is no  
10 nonhearsay purpose for this document. And in any event, it's  
11 not clear how it's relevant other than for impeachment  
12 purposes, which he has already achieved.

13 MR. SCHMIDT: This witness has repeatedly said that  
14 none of the products include training, and therefore everything  
15 of the product was ephemeral, while at least the product listed  
16 includes training. He is not telling the truth. He is lying  
17 to the jury about what the product is that he has been given by  
18 Thoth. Not that there really was training, but that the  
19 product that is --

20 THE COURT: It clearly is a hearsay document. Use it  
21 to refresh his recollection. Again, I think it's a  
22 definitional thing. He says there were products involving  
23 training. The issue is there was no training. You can use it  
24 to refresh his recollection, that's all, but not to admit it.

25 MS. FLETCHER: Mr. Schmidt did that. He attempted to

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1 refresh Mr. Sinclair's recollection with this document and Mr.  
2 Sinclair still did not recall the document.

3 THE COURT: It's a Thoth document. It's not coming  
4 in.

5 What else?

6 MS. FLETCHER: There was another issue with respect to  
7 the defense document marked BS-03. This is the Edge  
8 questionnaire.

9 THE COURT: That he read. Is that with the  
10 handwriting that he read?

11 MS. FLETCHER: Yes. And he went through and indicated  
12 which questions were in fact true and partially true. He read  
13 through the document.

14 THE COURT: He did. Not I.

15 MS. FLETCHER: Correct, your Honor. And you will  
16 recall that the government initially objected to this document,  
17 and then once your Honor said he is using it to impeach Mr.  
18 Sinclair, the government withdrew its objection. So after we  
19 withdrew our objection, Mr. Schmidt did not reoffer the  
20 document. It was not admitted. The government's understanding  
21 of the record on this particular document is that it was not  
22 admitted but was instead used to impeach Mr. Sinclair.

23 THE COURT: What are you asking now?

24 MS. FLETCHER: Nothing. That's the state of the  
25 record as it is. So it was not offered. It was not admitted

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1 as of right now.

2 MR. SCHMIDT: It was offered. It was objected to.  
3 The objection was withdrawn. I guess what we are missing is  
4 your Honor saying --

5 THE COURT: I think that's right.

6 MS. FLETCHER: If your Honor is intending to admit the  
7 document now, the government has a different objection.

8 MR. SCHMIDT: I think it's a little too late for that.

9 THE COURT: You withdrew your objection. What is the  
10 objection at this point?

11 MS. FLETCHER: I withdrew the objection because I took  
12 your Honor's point that he was trying to use the document to  
13 impeach Mr. Sinclair. And so it wasn't being offered for its  
14 truth. It was being offered to show that Mr. Sinclair lied.

15 There are other assertions in this document that I  
16 expect Mr. Schmidt will argue are true.

17 THE COURT: Let's see. Are you going somewhere else  
18 with the document?

19 MR. SCHMIDT: That's a good point.

20 MS. FLETCHER: It is, isn't it?

21 MR. SCHMIDT: Your Honor, an interesting point would  
22 be that I did not go into questioning other than for his  
23 honesty. However, he read it and said certain questions are  
24 true. So if I wanted to -- and I don't need to refer to the  
25 document -- I can ask him the actual question, and if he says



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1 something different, then we have the impeachment of a prior  
2 inconsistent statement.

3 To satisfy perhaps the government, if I do want to use  
4 any of the information in there, I will ask it as a question,  
5 and not a question from that document, and only if he gives an  
6 answer that is different than the document will I then refer to  
7 the document.

8 THE COURT: I understand. It's admitted.

9 What else?

10 MS. FLETCHER: Your Honor, so now that the document is  
11 admitted, depending on the questions that arise from this  
12 document tomorrow, the government --

13 THE COURT: He is not going to ask questions from the  
14 document.

15 MS. FLETCHER: No. But I heard from Mr. Schmidt a  
16 hedge.

17 THE COURT: Mr. Schmidt, listen.

18 MR. SCHMIDT: If the witness can hedge, then I should  
19 be allowed to.

20 MS. FLETCHER: If Mr. Schmidt is going to hedge and  
21 attempt to introduce statements in this document to argue that  
22 they are true, the government will seek a limiting instruction  
23 with respect to those statements.

24 THE COURT: All right. Fine. I don't think Mr.  
25 Schmidt is going to do that. He is going to move on.

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1                   What else? That's it?

2                   MS. FLETCHER: That's it from the government.

3                   (Adjourned to October 26, 2018, at 9:30 a.m.)

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